IDEAS ON LIBERTY

May 2003 Vol. 53, No. 5

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IDEAS ON LIBERTY

Published by
The Foundation for Economic Education
Irvington-on-Hudson, NY 10533
Phone: (800) 960-4FEE; (914) 591-7230
Fax: (914) 591-8910; E-mail: iol@fee.org
FEE Home Page: www.fee.org

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Ideas on Liberty (formerly *The Freeman: Ideas on Liberty*) is the monthly publication of The Foundation for Economic Education, Inc., Irvington-on-Hudson, NY 10533. FEE, established in 1946 by Leonard E. Read, is a non-political, educational champion of private property, the free market, and limited government. FEE is classified as a 26 USC 501(c)(3) tax-exempt organization.

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The costs of Foundation projects and services are met through donations, which are invited in any amount. Donors of $39.00 or more receive a subscription to *Ideas on Liberty*. For delivery outside the United States: $54.00 to Canada; $64.00 to all other countries. Student subscriptions are $10.00 for the nine-month academic year; $5.00 per semester. Additional copies of this issue of *Ideas on Liberty* are $4.00 each.

Bound volumes of *The Freeman* and *Ideas on Liberty* are available from The Foundation for calendar years 1972 to 2001. The magazine is available in microform from University Microfilms, 300 N. Zeeb Rd., Ann Arbor, MI 48106.

Cover: Julia Morriss, with her American Girl dolls.

PERSPECTIVE

Vices and Crimes

Susan Lee, of the *Wall Street Journal*'s editorial board, accuses libertarians of an "annoying optimism," but her article "Sex Drugs and Rock 'n' Roll" (February 12) is enough to make even the most sanguine libertarian glum. It's a little discouraging at this late date to see libertarianism yet again described as a brand of moral relativism. But that's how Lee describes it. While sympathetic to the freedom philosophy, she peddles a time-worn and faulty syllogism: Libertarians put certain matters beyond the reach of the state; morality (excluding rights violations) is one of those matters; *ergo* libertarians believe there is no objective morality. "It is . . . a postmodern attitude," Lee writes.

Really? That would be news to my libertarian friends who are Catholics, Protestants, Jews, Muslims, Aristotelians, Kantians, and Objectivists. Although there certainly are libertarians who embrace moral relativism, libertarianism is not intrinsically relativist. Toleration is not relativism.

She writes, "Libertarians are not comfortable with normative questions. They admit to one moral principle from which all preferences follow; that principle is self-ownership. . . . By contrast, conservatives are comfortable with normative issues. Conservative thought works within a hierarchical structure for behavior that has, at its top, absolute and enduring values. These values are not the result of the agnostic process of the free market."

With all due respect, this is pish-posh. Libertarians aren't typically uncomfortable with normative questions—they just don't want politicians arbitrating them. Nor do they necessarily deny the existence of absolute and enduring values—they just don't want the police enforcing them. No libertarian is obliged to believe that values are nothing but "the result of the agnostic process of the free market." They are only obliged to believe that as long as a person respects the rights of others, he may choose his own values, however misguided he is. The market tells us *what* people value, but not what they *should* value.

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Lee mistakenly merges ethics and politics. Ethics is concerned with right and wrong politics with the conditions under which government may legitimately use physical force. The disciplines overlap, but they don't coincide. It is perfectly coherent to believe in an objective moral code, to teach it to one's children, to urge it on one's neighbors, *and* to think that it shouldn't be inflicted with a nightstick.

Somewhere Ludwig von Mises wrote that classical liberals aim to exclude the state from morality and religion not because they are unimportant, but because they are very important. It's a simple point, actually. How long is it going to take the rest of the world to get it?

* * *

When is philanthropy not really philanthropy? James Payne examines a case in point.

The U.S. Defense Department wants to track Americans' electronic activities and troll for possible terrorist patterns. David Brown warns that's not all we should expect from Total Information Awareness.

A doll maker won success in an unlikely way: by getting girls to become interested in history. Andrew Morriss offers an eyewitness account.

It's widely believed that a society cannot begin to get rich until it is educated—by the state. Christopher Lingle calls that nostrum into question.

As laws proliferate a new kind of "entrepreneur" comes on the scene: lawyers who can get rich by forcing settlements on businessmen guilty of no wrongdoing. Steven Greenhut reports on an ominous legal fashion in California.

A jury ordered the tobacco industry to pay big damages to smokers in Florida. The news made ex-smoker Ted Roberts think about his former "addiction" to nicotine and what this all says about our society.

When environmentalists proclaim that industry should turn waste byproducts into resources they are merely discovering what Victorian businessmen knew well. Pierre Desrochers shines the spotlight on profit-driven ingenuity.

If you wander into a typical college economics class you may think that calculus, not economics, is being taught. That's the problem, Brandon Crocker writes.

This entrepreneur built an entertainment empire, launched the careers of many singing stars, and changed the culture in more ways than one. Larry Schweikart charts the career of Berry Gordy Jr.

It's taken for granted today that democracy is good and that the United States should spread it. Norman Barry points out a few problems with everyone's favorite political scheme.

As for our columnists, Lawrence Reed reminisces about Prague Spring; Doug Bandow sees ominous developments in health-care policy; Thomas Szasz exposes the fraud of health insurance; Burton Folsom tells the sordid tale of the progressive income tax; Donald Boudreaux says the market makes us smart; Charles Baird wonders why no one cares about union corruption; and Jerry Taylor says to those who think people sell us oil because they like us, "It Just Ain't So!"

Our reviewers have kept busy pondering books about American power, American law in the twentieth century, the history of American psychiatry, reparations for black Americans, white nationalism, and the conflict between Thomas Jefferson and John Marshall.

—SHELDON RICHMAN

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MAY 2003

OPEC Sells Us Oil Because It Likes Us?

It Just Ain't So!

Slavish devotion to common but wrong-headed ideas about economics is never more in need of exposure than when the subject is oil and the Persian Gulf. Here wrong-headed ideas about economics can get someone killed.

But there they were on full display last January in the *New York Times*, under the title "Axis of Oil," when an editorialist stated, "Our fortunes are tied to the good offices of the big [petroleum] producers three decades after the oil shocks of the 1970's." The editorialist takes from this the need for the feds to do more to encourage/mandate energy efficiency. Foreign-policy elites take from this the need to keep authoritarian producer-states happy with the United States of America, which usually entails foreign aid, deference to their geopolitical interests, direct and/or indirect U.S. military commitments, and rhetorical support for the thugs who make life miserable for the now-famous denizens of "the Arab street."

However, the argument that the only thing standing between us and a horrific, 1970s-style oil price shock is the good will of Persian Gulf oil producers is dangerous nonsense—the kind of nonsense that some think largely responsible for our present life-and-death struggle with al Qaeda.

The fact is that oil producers make decisions regarding how much petroleum to bring to market based not on how they feel about the West on any particular day, but on how to maximize revenues to their treasuries. The producing states' self-serving representations to the contrary do not constitute evidence that anyone should take seriously.

The truth of that observation was settled conclusively in an exhaustive review of OPEC's record over the past several decades by MIT economist M.A. Adelman (see *Genie Out of the Bottle: World Oil Since 1970*). Adelman finds that never once in OPEC's history has the cartel or any member in it left money on the table to pursue some political objective. For instance, when the Ayatollah Khomeini kicked the Shah out of Iran in 1979, the oil kept flowing. When U.S. bombs rained down on Libya's Moammar Gadhafi in 1986, the oil kept flowing. We had to impose an *embargo* on Iraq's Saddam Hussein to get him to stop selling oil to the world market. And Castro Mini-Me Hugo Chavez labors mightily to get the oil flowing again to his hated enemies in the capitalist world.

Anti-American regimes stand to gain nothing by holding back oil from the world market. Where else would they find the revenue to fund terrorism or other "martyrdom operations" in the Middle East? To pay for their police states? To beef up their militaries? To build dozens of mansion/temple/monuments to themselves? To buy off opponents of their regimes?

Meanwhile, ostensibly pro-American Persian Gulf regimes have frequently turned into the fiercest price hawks of all. Take, for instance, the Saudi government, a group of potentates who supposedly have a "special relationship" with the United States. The Saudis took the lead in organizing the 1973 oil embargo and production cutbacks, sending oil prices from $2 a barrel to $7 a barrel. In 1974, despite promises to the contrary, they initiated another round of production cutbacks and tax hikes, sending oil prices to $11 a barrel. In 1978 OPEC, under Sheik Yamani's direction, quietly established a goal of raising the price of crude oil to just below the cost of producing synthetic liquid fuels, which suggested a price of $60 a bar-

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rel (a whopping $136 in today's terms). They began their campaign in January 1979, when a series of Saudi production cutbacks set off the second price explosion, culminating in prices of $34 a barrel ($60 a barrel in today's money) by October 1981.

The only reason that crude oil prices never reached the levels dreamed of by our Saudi "friends" was the advent of independent oil commodity markets (particularly futures markets) and, in the words of the Kuwaiti oil minister at the time, because of "a consistent underestimation of potential supply and a consistent underestimation of the consumers' ability to adjust their demand [which] . . . led OPEC to overestimate their strength."

Prices Collapse

A price war followed, and after desperate Saudi attempts to stop it failed, Vice President George Bush traveled to Riyadh in 1986 to implore the Saudis to arrest the price slide because—I kid you not—the administration publicly feared the impact of cheap oil on the world economy. (Privately, it was probably more afraid of the impact on domestic producers, who were quite near death's door by this time.) Since by this time the Saudis were feeding the collapse to inflict pain on competitors who needed a lesson in production discipline, they naturally responded to Bush's pleas by . . . increasing output still more.

Once the price war was over, the Saudis encouraged Iraq to put the screws to Kuwait to punish that country for its history of cartel-breaking overproduction. According to Adelman, only when "the enforcer turned robber" in 1990 did Saudi Arabia reverse course and call for Western intervention. But even then, the Saudis fed the resulting price spike by refusing to increase production for over a month, and their refusal to fully tap their excess production capacity prolonged the economic damage.

Blind to this record of predation, the editorialist argues that "For now, at least, OPEC is helpfully trying to keep prices between $22 and $28 a barrel. It knows that allowing prices to hover above the $30 mark hampers global economic growth." But what does the cartel care if the global economy goes into the tank? After all, their fattest economic years coincided precisely with the global economic stagnation of 1973–1981. These regimes typically have nothing else to sell to the market and little investment abroad. A slump bothers them not in the least.

The truth is that the cartel is well aware that sustained prices above $30 threaten to bring a flood of non-OPEC oil and increased interest in conservation. Those are the two hammers that nearly killed the cartel for a decade beginning in the mid-1980s. Of course, better to tell the gullible that filial commitment to the West explains cartel management rather than cold economic self-interest.

Adam Smith once wrote that it was not from the beneficence of the butcher, the baker, and the brewer that we got meat, bread, or beer. Likewise, it is not from the beneficence of the OPEC cartel that we get gasoline. Believing otherwise is dangerous nonsense.

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IDEAS ON LIBERTY
MAY 2003

A Philanthropist Goes to Washington

by James L. Payne

In philanthropy, as in other human undertakings, there are degrees of performance, from inspired to disappointing. Because the very act of generosity merits some credit, we are reluctant to give an entirely negative rating to any donor, but sometimes a philanthropist comes along who tests our forbearance. A case in point is Ruth Lilly, heiress to the Eli Lilly pharmaceutical fortune, who announced last December a gift of $120 million to support the arts.

If you had $120 million and wanted to assist the arts, how would you do it? Well, you could simply identify 12,000 artists and give each $10,000. Or you could give the money directly to art museums, art schools, orchestras, and so on. Unfortunately, Ruth Lilly and her lawyers had a different idea. She donated the entire $120 million to an organization called Americans for the Arts, a pressure group that lobbies for taxpayer funding of the arts. Its main effort is a yearly campaign to persuade Congress to pass higher appropriations for the federal National Endowment for the Arts (NEA). From its plush offices on Vermont Avenue and K Street, in Washington, D.C., Americans for the Arts organizes teams of lobbyists and celebrities who, the *Washington Post* reports, "fan out across Capitol Hill, calling on members of Congress and other key officials."

In other words, instead of buying art, Ruth Lilly has chosen to buy votes—which she hopes will translate into art. She's not alone in this approach. Over the years, a number of donors and foundations have targeted their giving not at helping people and solving problems, but at getting government to help people and solve problems. One philanthropist in this mold was Albert Lasker, who in the 1940s was interested in cancer research. Instead of directly supporting such research, Lasker gave his millions to the American Cancer Society to support its lobbying for tax funding of cancer research.

What's wrong with this politically oriented philanthropy? To begin with, there's an ethical problem. Government does not have any wealth of its own. Its subsidy programs simply transfer it. They take money away from Americans who were going to spend it on worthy causes of their own choosing—food, housing, travel, business investment, education, charity—and transfer it to the beneficiaries of the subsidy program. Hence what Ruth Lilly is trying to buy with her purchase of lobbying services is an enhancement of the system of robbing Peter to pay Paul the art administrator. Since the biggest taxpayers are wealthy individuals, the Peters being robbed are, to a large extent, her fellow philanthropists who are thus prevented from spending their money on their chosen causes.

James Payne (jlpayne@netw.com) is the author of The Culture of Spending: Why Congress Spends Beyond Our Means *and* Costly Returns: The Burdens of the U.S. Tax System *(ICS Press).*

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Even if the lobbying works, this is not a high-minded, creative approach.

The second problem with Lilly's lobbying approach is waste. Government subsidy systems have huge overhead costs. These include not only the costs of running the IRS but also a much larger burden placed on the economy in the form of tax-compliance costs and disincentives to production. By a conservative estimate, these costs amount to 65 cents for every tax dollar collected. In addition, there is the overhead and waste in the government agencies that disburse the funds. For example, the NEA spends only about half its appropriations in actual grants to artists and art projects. The rest is eaten up in administrative overhead, transfers to other agencies, and public-relations campaigns.

Overhead Costs

So let's step back and see just what is happening to Ruth Lilly's gift to Americans for the Arts. After raking off a share for its own overhead costs, Americans for the Arts then tries to "buy" the votes of enough congressmen to increase the appropriations of the NEA. There are two possible outcomes. One is that the lobbying campaign succeeds, that it results—let's be optimistic—in a $10 million increase in the NEA budget (now $105 million). This will mean that Ruth Lilly has made Americans about $16.5 million poorer (the figure includes the tax-system waste factor) in order to direct about $5 million to art (the figure includes the bureaucracy waste factor). So under this optimistic scenario, Ruth Lilly will have purchased something like 4 percent of the arts support she could have had simply by spending her $120 million directly on the arts.

The other possibility is that the lobbying campaign is unsuccessful. Perhaps higher appropriations for the NEA are blocked by a budget crunch, or changing political winds. In this scenario, then, Ruth Lilly has completely wasted her $120 million. Instead of the 12,000 artists who could have been supported with that money, all that remains are wistful memories of celebrity visits to congressional offices.

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MAY 2003

The State's Quest for Total Information Awareness

by David M. Brown

Efforts to transform the United States into a surveillance regime on a totalitarian or quasi-totalitarian model are currently underway.

In addition to attempts to beef up and make uniform the state driver's licenses—thereby blending them into either a de facto national ID card or the immediate precursor to one—attempts are also in progress to impose a "trusted traveler card" on all air passengers. This card could also be the precursor to a mandatory national ID card designed to help the government monitor your movements. The most ambitious plan yet to electronically canvass Americans, however, is the Defense Department's Total Information Awareness (TIA) project. The goal is to rummage through the private transaction records of everyone in America, including people who never leave the house.

Congress has put restrictions on the development of TIA but so far it has not eliminated the program. Therefore, it is premature to regard the issue as dead.

In "The Pentagon Ramps up the War on Privacy" (*Ideas on Liberty*, April), I pointed out that at the very least, the TIA database, if built, would be susceptible to all the errors and crimes to which all other databases are susceptible—with the added advantage of hyper-centralization of our recorded transaction data so that a vindictive clerk or random hacker need only violate a person's privacy once in order to wreak havoc across the board. I presented some of the history of private databases. Perhaps you will not be surprised to learn that governmental databases are no less subject to blunders and breaches of security.

"[E]rror rates for Internal Revenue Service data and programs are typically in the range of 10 to 20 percent," report Cato Institute authors John J. Miller and Stephen Moore. "A 1989 General Accounting Office study determined that 20 percent of a sample of INS data on aliens was incomplete and 11 percent of the files contained erroneous information. The National Law Journal reported . . . that INS files on 50,000 Salvadoran and Guatemalan aliens 'routinely contained the first and last names in the wrong order.' It also discovered that 'a name search was impossible because data was repeatedly entered into the wrong data field, that misspellings were rampant, and that numbers were often used in place of letters.' Even Social Security files have been found to contain error rates in 5 to 20 percent of cases."[1] There is no reason to think that any centralized database forming the hub of a surveillance regime would be immune to such errors.

Bad policy is another problem. While there are no statistical measures of bureaucratic lapses in judgment, there is plenty of anecdotal evidence. One example occurred in 1997, when taxpayers learned that the

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David Brown is a freelance writer and editor. This is the second of two parts.

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Social Security Administration (SSA) was providing tax data about individual taxpayers over the Internet. The SSA argued that because taxpayers would be obliged to enter their name, date and state of birth, and mother's maiden name before they could download their private information, their information would be secure. While such "security" may have been good enough for government work, the flak from taxpayers (plus the prospect of a Senate investigation) persuaded the agency to amend the system.[2]

The Securities and Exchange Commission (SEC) is another security naïf. Until mid-1997, the SEC routinely collected Social Security numbers (SSNs) on filings that were then made available on its website. It had to revise its procedures to accommodate privacy concerns. "With the growth of the EDGAR database, and its availability to millions of viewers on the commission's Web site, the commission is concerned that these numbers are too readily available," said the SEC in explaining the rule change. "The usefulness of Social Security numbers filers voluntarily provide on these forms is outweighed by the risk of misuse created by the disclosure of those numbers." Yet a few years later the SEC had yet to remove or modify older documents on the site that still displayed SSNs. The SEC would not even black out the numbers on the screen. SEC spokesman John Heine told reporters, "We can't alter those forms. They are a matter of public record."[3]

Nonchalance with Records

In his book *A Law Unto Itself*, David Burnham notes that one of the areas in which the Internal Revenue Service has demonstrated "considerable nonchalance is in its protection of the confidential information it collects on the financial, medical, and other personal secrets of every taxpayer." This is despite the fact that the Tax Reform Act of 1976 "sets a high legal standard for the IRS: Personal tax return information is not to be disclosed to any other organization or person except in certain precisely defined situations. The law made it a crime for any IRS employee to violate these rules."[4]

Burnham found that, as late as 1989 (when his book was published) it was all too easy to tap into the IRS's computers—though, until then, there had been only one reported instance of a hacker's doing so. A greater risk for taxpayers is that an employee entitled to access the data will do so for personal reasons. Despite recurring instances of illicit "browsing," until recently agents caught doing this could not be prosecuted unless they had also revealed the information to others. In 1997 the First Court of Appeals dismissed a case against an IRS agent on those grounds.[5] Partly as a result, Congress tightened the law. Even if invasive browsing is technically prohibited, however, there is not much a victim can do unless he first knows that it is going on. The deck is somewhat stacked against victims of the government anyway. IRS personnel, like those of other high-power federal agencies, often feel free to act above the law; and even when chastised for doing so, they often get little more than a slap on the wrist.

Sometimes bureaucrats are more than nosy or careless; sometimes they are outright criminal. In 1996 the government accused a gang of clerks at the Social Security Administration of appropriating the data of more than 11,000 people. The clerks had sold the information to crooks, who used it to activate stolen credit cards. The legitimate cardholders soon found themselves encumbered with huge unexpected bills.[6]

Policemen and others in law enforcement have also pilfered databases—in pursuit of personal, political, and criminal ends. In quest of a girlfriend, an Australian policeman performed thousands of unofficial searches of a police database. He later claimed that many of the searches were "training exercises."[7] Police in Highland, Indiana, were excluded from an FBI database after officers were accused of repeatedly abusing their access.[8] The Shawnee County, Kansas, sheriff's department was investigated for running criminal background checks on organizers of a campaign to recall the sheriff.[9] A sheriff's lieutenant in Mary-

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land was charged with plundering a database to help out local Democrats.[10] A former FBI agent teamed up with a worker in the Nevada attorney general's office to sell information from the FBI's database to the mob.[11] A Detroit police officer tapped into the Law Enforcement Information Network and other police databases to investigate his wife and her acquaintances; he was later suspected of complicity in her murder.[12]

There are many other cases.

Public-Private Cooperation

When confidential data isn't being scavenged by rogue employees, it may be given or sold by management itself. Government agencies sell personal information to private firms and vice versa, usually without the knowledge and permission of the persons involved. For example, Maryland state employees sold private information on Medicaid recipients, including their Social Security numbers, to HMOs seeking new customers.[13] Some such abuses may be illicit, but others are just standard operating procedure.

Cash-strapped state governments will sell driver's-license data if they can. In 1999 the New Hampshire firm Image Data was negotiating to buy the driver's-license databases of five states, and planned to acquire the databases of all the states, until public objections killed the effort, at least temporarily. South Carolina Attorney General Charlie Condon filed a lawsuit to prevent the federal law that authorized the sale of private driver's license information from going into effect.[14] It turned out that Image Data was funded largely by the federal government, and that the Secret Service was involved in the development.[15] The goal was to create a national database of driver information and photos that would be at the disposal of the federal government, as well as perhaps retailers cashing checks.[16] According to Image Data, its intention was to prevent fraud and tighten privacy safeguards.[17]

Money is not always an incentive. In the wake of 9/11, many private organizations have been eager to hand over entire databases to the government to help in the fight against terror. For example, based on mere vague threats of an attack that might involve skin-diving terrorists, the Professional Association of Diving Instructors (PADI) gave its entire membership database to law enforcement—even though it had not yet been obliged to do so by court order, subpoena, or other legal compulsion.[18] Any prior respect for the privacy of its members was apparently now moot. Over the past year and a half, vague terrorist threats have encompassed virtually every aspect of America, from trains to apartment houses. According to the reasoning followed by the officers of PADI, no firm or organization whatever could be justified in declining a polite request from the government to inspect the private information of its customers or members.

And once government gets our information, it is all too liberal about redistributing it. Devon Herrick, a researcher with the National Center for Policy Analysis, notes that people "face a greater threat to their privacy from government than from the private sector. In general, people have little or no control over what information is collected, how much is shared or how securely it is stored. If a business refuses to keep private information about one's consumer preferences secure, consumers can take their business elsewhere. But they hardly have the same opportunity when it comes to the Department of Motor Vehicles or the Internal Revenue Service. Government (federal, state and local) collects and shares more personal information about individuals than any other entity." Herrick pointed out that the privacy organization Privacilla "found that during an 18-month period beginning in September 1999, federal agencies announced 47 times that they would exchange and merge personal information from databases about American citizens."[19]

The conduct of both private and governmental entities suggests that, even if the data-scavenging regime imagined by Poindexter did somehow nip in the bud the bomb-throwing breed of terrorism, it would also increase everyone's vulnerability to cyber-blundering, cyber-crime, and cyber-

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terrorism. The privacy-violating character of the government's reporting requirements for private transactions (such as for all bank transactions of $10,000 or more), though egregious, has until now been mitigated by the fact that the information collected is not generally available except to the clerks shuffling the data, investigators pursuing a specific case, bureaucrats pursuing a vendetta, and possibly hackers. Under the TIA regime, all that would change. Not only would the centralized depository required by such a regime present a more inviting cyber-target than ever; the costs paid by the victims of successful hacks would be greater than ever as well. And how hard would it be, really, for a determined cyber-terrorist to get a job as a clerk where he could do a lot of damage? It's not as if you'd need only three or four people to maintain the TIA database.

Brave New World

The creators of Total Information Awareness claim that if their dream is realized, privacy would be respected and security protocols would be ironclad. But no database, regardless of purpose or public assurances, can be entirely secure from careless or unscrupulous persons. Even the most robust security system is susceptible to an inside job—or to typos. No matter how heavily armored, no functioning database can be entirely sealed off from intrusion. The reason is that *every database must be capable of being read and updated*. Someone is doing the reading; someone is doing the updating. Many of these people are ordinary clerks.

In the best of all possible national-identification regimes, the people entering and safeguarding our data would be invariably careful, sensible, and honest, never violating the implicit trust in them. But we know that this is not the case. It might be reasonable to expect a high level of trust when requested information is specific to a given transaction, provided voluntarily, and safeguarded by persons who can be held accountable. But the many and growing documented cases of abuse by those entrusted with our data, especially when that information is grabbed and transferred by force, show that this is not a reasonable expectation. Even supposing the TIA protocols to be more "secure" than what the Social Security Administration or motor vehicle departments consider to be "secure," it will still be the case that the persons whose privacy and security are at stake would not be allowed any choice in the matter. Robbing the individual of his freedom to make those decisions himself—decisions about who gets his private information and under what circumstances—can only render his private affairs less secure and more vulnerable.

Of course, in the new surveillance regime, the problems caused by errors, dishonesty, or lack of accountability would only be exacerbated for those saddled with the "wrong" national or ethnic background, or with the unfortunate necessity of having to conduct "unusual," flag-raising bank transactions.

In April 2002 almost half of a group of protesters on their way to Washington, D.C., were forced to miss their flight because their names were similar to names on a watch list. One of the passengers was named "Jacob Laden."[20] There could be lots of trouble for certain people if a radical Islamic terrorist ever decides to go by the name of "John Smith." These incidents are frequent enough as it is. Imagine how many more opportunities there would be for "profile matches" if, down the road, airport security personnel were able to check your ID against all the varied information collected on you in the Total Information Awareness database.

We will not increase our personal security by making it easier and easier for more and more strangers to roam through our private records. Given the potential for abuse, it would be better if as little personal data as possible were collected, tailored always to the specific purposes of a transaction. Such data as is collected should be treated as a sacred trust. To decrease the likelihood and costs of cyber-invasion, the security of existing databases should be fortified when necessary. But except when criminal records are involved, databases that are now segregated

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from each other must remain segregated. Yet projects like the updated Computer-Assisted Passenger Prescreening System (CAPPS II) or Total Information Awareness would send us hurtling in the opposite direction, integrating all kinds of disparate, innocent private data about us into a single centralized database, in blatant violation of our rights. By treating everybody as a suspect, such overreaching would turn everybody into a potential victim. And not on a temporary wartime "emergency" basis, either. Once such databases are created, they don't fade away. They just get copied and recopied.

Total Disinformation

Some have suggested that if the Total Information Awareness program fails to achieve its utopian goal of omniscience about the motives underlying a citizen's transactions, it would pose little actual danger to our privacy.

In fact, only if the recommended database is never built or used at all could there be no danger to us. We must not forget that many in government have hoped to create a centralized, comprehensive national database about all Americans and resident aliens at least since the 1960s. These demands have grown more insistent. National employment databases, national medical databases, national criminal databases, and others have already been created. The dream is to blend all these separate resources into a single centralized one. The existence of a now-universal data tag like the Social Security number has made it possible to collate and retrieve all this information in a single scoop, without complicated algorithms or sophisticated artificial intelligence. Certainly the data storage problem has been solved; computer memory grows cheaper and more powerful every year. Whether or not the desired data-mining software can be programmed, the only real impediments to creating the database that now remain are political and cultural: the stubborn assumption of so many Americans that they have rights.

Now is the time to appeal to that independent spirit. Sooner or later, the database would be used for many other purposes besides second-guessing terrorists—who, one must assume, would do their best to avoid fitting the profile (and who need accomplish their goals only once in any case). A national ID card—the final nail in the coffin of our right to roam unhindered as free men and women—would be a natural next step. Once a centralized database of all our transactions is built, it will be that much easier to impose such a card—even if those who authorize and erect the database promise that it will never be used for that purpose. Even if such promises are made in good faith, the people shaping policy today will not be shaping policy tomorrow.

The complex data-mining that Poindexter wants to install is a massive endeavor that will take years of arduous work to accomplish, if it can be accomplished at all. Implementation will require additional authorization from Congress. But we can hardly be optimistic that the legislators will suddenly "see the light" if they fail to quash the project before TIA becomes operational. CAPPS II is similarly intrusive, and much closer to launch date; meanwhile, its predecessor has been in use for years. The principle of such intrusive data-canvassing is thus already widely accepted. Certainly, notwithstanding periodic controversies about the privacy issues involved, congressmen have allowed many of the intrusions to persist. Indeed, they have often inaugurated them.

Before the Homeland Security Act was passed last fall, some feared that it would authorize not only the funding of TIA development—already being funded anyway to the tune of hundreds of millions of dollars over the next three years—but also its ultimate implementation. Getting TIA on line would require the power to order all banks, phone companies, credit-card companies, Internet service providers, and the like to hand over all their records, without ever being served with legal papers. Such authority might well have been explicitly stipulated in the Act had not *New York Times* columnist William Safire and others spread the alarm prior to the bill's final passage.

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Last year former representative and majority leader Dick Armey stressed that the Act "does not authorize, fund or move into the [homeland security] department anything like [TIA]"; and that the use of data-mining tools in the bill are "intended solely to authorize the use of advanced techniques to sift through existing intelligence data, not to open a new method of intruding lawful, everyday transactions of American citizens."[21]

Armey's characterization of the Homeland Security Act may be technically correct. But we know that some of the required authority already exists de facto (for example, insofar as banks are required to report certain kinds of financial transactions of their customers to the government, employers are required to report on their new employees to help build a national employee database, and so on). And the Homeland Security Act as passed provides for a "Directorate for Information Analysis and Infrastructure Protection," which would be empowered to "access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies, *and private sector entities*, and to integrate such information in order to . . . detect and identify threats of terrorism against the United States."[22]

What this broad mandate will mean when it comes to seizing private data remains to be seen. It is true that eventual congressional authorization (whether tacit or explicit) of a ready-to-roll TIA program is not inevitable. But it is hard to see what principled objection the national lawmakers could raise in light of the precedents they have already sanctioned. If Total Information Awareness is to be stopped, it will most likely be stopped not by the principles or natural inclinations of politicians, but by the principles and protests of constituents. □

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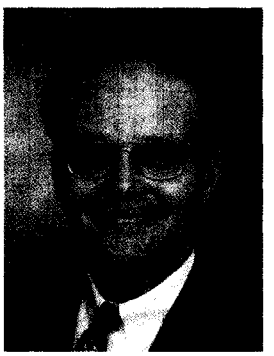

Remembering Prague Spring

When the Eastern European empire of the Soviet Union melted away in 1989, and the Soviet Union itself dissolved two years later, wise observers noted that these developments hadn't materialized overnight on their own. They were the result of critically important events that had punctuated seven decades of Soviet communism. The 35th anniversary of one of those events is now upon us, and its significance deserves to be remembered. As it unfolded in 1968, it was known to the world as the Prague Spring.

Czechoslovakia, on paper at least, did not seem to be a place where a major challenge to communist rule would emerge in the 1960s. Historically, Czechs and Slovaks viewed Germany as their principal oppressor. The West, primarily Britain and France, delivered the Czechoslovakians to the Nazis to make "peace in our time" in 1938. Anti-Russian sentiment was never very strong in the country, and in the aftermath of World War II, Czechoslovakians gave the Communist Party a greater percentage of the popular vote than its counterparts received in other East European nations. As author Mark Almond notes in his book, *Uprising: Political Upheavals that Have Shaped the World*, "the country seemed placidly pro-Soviet well into the 1960s."

Empires, however, have a funny way of crumbling unexpectedly. The seeds of dissipation are sown by the empire-builders themselves when they impose their will at the point of a gun. Resentment simmers beneath the surface. Ideas of defiance coupled with a vision for a better and freer future take hold. Courage among the oppressed gathers momentum. Leadership emerges from often-unlikely personalities. A critical mass is reached as events spin out of the regime's control and *voilà*—the old, invincible order is, to use a culinary colloquialism, toast.

The thawing of the communist deep freeze in Czechoslovakia started shortly after the aging, hard-line Party leader Antonin Novotny was demoted to the less-important post of president in January 1968. In his place emerged a younger apparatchik named Alexander Dubcek. From Moscow's standpoint, Dubcek was seemingly a safe bet, unlikely to rock any boats. However, the air was thick with talk of "reform" to revive the Czechoslovakian economy, which once rivaled the richest in Europe but under socialist rule had tumbled into depression. Dubcek almost immediately sided with reformers and announced plans to allow a greater role for freedom of expression, private property, and entrepreneurship. Pressure from other reformers, supported by large public rallies, forced Novotny to resign from government in March.

The months of April, May, and June 1968 brought breathtaking change. On April 5 the Czechoslovakian Communist Party itself called for "democratization" of the political

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system and laid out a plan for eventual elections in which it would compete freely with other parties. Sensing a new era, reporters and editors in the state-run media began speaking their minds, criticizing socialism, and endorsing further reform. On May 1—a day the communist world traditionally celebrated with parades and paeans to orthodoxy—Czechoslovakians turned out in throngs to endorse the new freedoms. For the first time anywhere in the East bloc, censorship was officially abolished on June 26. The world watched in amazement, and wondered how far the Soviets would let this phenomenon go.

Kremlin treachery was in full swing while Prague's springtime of liberty blossomed. In late May, high-ranking Soviet military officials visited Czechoslovakia to lay the groundwork for Warsaw Pact military exercises. Six weeks later, a meeting in Warsaw of top Communist Party representatives from the Soviet Union, Hungary, Poland, East Germany, and Bulgaria produced a sternly worded warning to Dubcek. "The situation in Czechoslovakia," they declared, "jeopardizes the common vital interests of other socialist countries."

Brezhnev Doctrine

In early August Soviet leader Leonid Brezhnev met with Dubcek in Bratislava. There, the Brezhnev Doctrine was spelled out. It declared, in essence, "once a socialist state, forever after a socialist state." Nonetheless, Brezhnev dismissed the suggestion that he might be about to invade.

But on August 20 one of the ugliest and most duplicitous acts in Cold War history unfolded before a horrified world. Half a million Warsaw Pact troops stormed the Czechoslovakian borders, heading toward the capital city and strategic points across the country. Along their way, they distributed leaflets proclaiming they were sent "to come to the aid of the working class and all the people of Czechoslovakia to defend socialist gains." By the end of the month, the reform leaders, including Dubcek, were stripped of power. Economic and political liberalization was canceled and censorship was reintroduced.

Faced with overwhelming force, Czechoslovakians met the invaders not with bullets but with protests, the most tragically poignant of which took place in Wenceslas Square in downtown Prague on January 16, 1969. On a spot marked today by a small wooden cross and a plaque, a 20-year-old student named Jan Palach set himself afire. His supreme sacrifice earned him the status of Prague Spring's foremost martyr.

When a spokesman for the last Soviet leader, Mikhail Gorbachev, was asked in 1987 what the difference was between Gorbachev's reform policies and those of Prague Spring, his famous reply was "Nineteen years." The spirit that galvanized the Czechoslovakian nation in 1968 had not been crushed; indeed, it had infected the very heart of what Ronald Reagan labeled the "Evil Empire." The freedoms aborted in 1968 were won in the Velvet Revolution of November 1989, when, sapped of any moral legitimacy or resolve, communist rule and Soviet domination evaporated as millions of Czechoslovakians danced in the streets.

I confess to keen, personal sentiments for the brave citizens of Czechoslovakia in 1968. As a 14-year-old in junior high school at the time, Prague Spring captured my fascination. The shock of the first report of the invasion remains one of the defining moments of my life. I was profoundly incensed, and within days I gathered with other protesters in Pittsburgh to demand that troops withdraw. That began my lifelong commitment to freedom and free markets. I quickly learned that waving a placard was hardly enough to be a good anti-communist. To defeat despotism, one must understand the philosophy and economics of liberty.

For the memory of Jan Palach, for the perseverance of the Czech people, for the greater message of resistance to tyranny everywhere, we should not let the 35th anniversary of Prague Spring pass without reflection on its meaning and gratitude for its contribution to the eventual liberation of half a continent. ❑

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Selling History with Dolls

by Andrew P. Morriss

Many people think that markets can't provide culture. History, for example, has to be supported through government-funded schools, endowments, and grants. In this view, markets can only destroy history: shopping-mall developers want to build on historic battlefields; priceless historic items wind up on eBay selling to collectors with piles of money but too little taste and knowledge to "truly" appreciate them; and ignorant authors of historical romances make millions by selling Americans sanitized and saccharine fluff instead of the stories of oppressed peoples that are "real" history.

Governments need to protect our history (and us), we're told, by funding historians, stopping malls, and providing standards for the teaching of history in schools. It turns out, however, that markets do exist for history, often in surprising places, and that entrepreneurs have found ways to "sell" history quite effectively.

My family recently visited American Girl Place in Chicago. The Pleasant Company, which operates this store together with its extensive catalog and website operation, has created a profitable niche selling history to tens of thousands of young girls. True, the history is dressed up in cute outfits and accessories, but it is real history. The company's message to parents makes it clear that selling history is critical to its product line: "American Girl's creator, Pleasant T. Rowland, believed that engaging stories about girls living at important times in the past—and dolls standing as tangible symbols of these characters—could breathe life into history, turning it into something real and personal, something today's girls could hold in their hands."

How does the company do it? Three things are critical.

First, the company has designed products that attract and hold the attention of its target audience, preteen girls, while simultaneously appealing to the family members who make the buying decisions. For the children, the dolls are attractive, fun to play with, and capable of acquiring an astounding amount of period clothing and other accessories. For the parents and grandparents who pay the bills, the dolls combine a well-made product with the bonus of an "educational" toy that will encourage children to learn about history and to read the accompanying books. As the company's website sums it up: "At American Girl, we're committed to helping you protect your daughter's individuality, intellectual curiosity, and imagination. We offer age-appropriate books and playthings for every stage of her life—keepsakes we hope she'll one day want to share with a daughter of her own."

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PHOTO COURTESY OF ANDREW MORRISS

Julia Morriss with part of her American Girl collection.

Second, the company has paid attention to its market and designed a set of products for it. There is Felicity, a child of colonial America just before the Revolution; an African-American, Addie, who has a heartwarming story of escape on the Underground Railroad; a Hispanic, Josefina, from New Mexico in 1824, when it was still serious about its Hispanic culture as something more than a theme park; an American Indian, Kaya, with a strong story of Nez Perce culture from 1764; Kirsten, a Swedish immigrant from 1854; Samantha, a wealthy child from 1904; Kit, a child of the Depression in the Midwest; and Molly, a child during World War II. In contrast to the assumptions of those who call for government-mandated diversity, the Pleasant Company has shown that markets respond to diverse customer populations. I am sure that future dolls will feature immigrants from other cultures as well. (In other product lines the company also offers diverse products: its modern dolls come in multiple skin tones to allow customers to get a doll that matches their child's color.) As it turns out, children don't just want the doll that matches their own ethnicity—they want them all. My younger daughter's bedroom is now a multicultural mélange mirroring our society.

Third, the company has a successful product. My daughters' school "social studies" books drain the life from American history. The Revolutionary War and Civil War become the opportunity for dry recountings of dates and names, mixed in with "inspiring" vignettes of diverse ethnic groups. These vignettes are, to be blunt, dull as dishwater because committees determined to offend no one wrote them. The American Girl books, on the other hand, are lively and engaging. Because they're fun to read, they get read—over and over and over. My daughters have undoubtedly absorbed more American history from the American Girl books—including more of the social history of "underrepresented" peoples that school text-selection committees seem to value so highly—than from their textbooks and social-studies classes combined.

Knowing the Market

Are there downsides to these wonderful products? Of course. The books aren't always as complete as I'd like; the explanation of the Great Depression's causes doesn't satisfy me as an economist, for example, and I'd like a lot more detail on the lack of freedom in Sweden that drove Kirsten's family to the United States. The books don't have a consistent classical-liberal analysis of events. Indeed, they don't really analyze many important events at all. But if the books *did* satisfy me on these points, they'd bore my daughters to tears. I might know more economics than the Pleasant Company and its authors, but they know a great deal more about what kids will and won't read. A few eight-year-olds may want to read serious economics and political theory, but most won't. On the whole, I think the Pleasant Company and its authors have struck about the right balance between entertainment and history in the books and the "back stories" for the dolls.

One other aspect of the product line deserves mention. In addition to buying the

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PHOTO COURTESY OF ANDREW MORRISS

Julia enjoys tea with her dolls at American Girl Place.

dolls and their many accessories through catalogs and websites (www.americangirlstore.com), you can visit the store. In addition to all the products, the store offers a musical production, lunch, tea, and dinner, a doll hospital, doll hair salon, and photo studio. On our visit my younger daughter got her picture taken with two of her dolls, had lunch with the dolls, and attended the musical. The lunch is designed to be elegant (keeping in mind that it is for children). The food was surprisingly good, cleverly presented, and cheerfully served. The dolls ate along with us in special chairs and with miniature plates and cups. The musical involved a club of girls and their dolls, learning to get along with one another after a dispute over who was whose best friend. The store was packed with girls and their dolls. (The only boys in sight were sitting in chairs waiting for their sisters to hurry up and get done.) Many girls were there with their grandmothers, others with mothers or other relatives.

The most impressive aspect of the store was the calmness of the hundreds of children 8 to 12 years old, each clutching her doll and many dressed in outfits that matched the dolls' clothes. Having led two Girl Scout troops, I can attest that this was not due to the innate good behavior of young girls. The good behavior and good manners on display were clearly the result of the store's product, an elegant experience with one's doll, family, and friends. Think of it: a merchant found a way to get young children to behave by offering them that experience and charging them for it. We often hear people decry the terrible effects of commerce on culture and civility. Our visit to American Girl Place suggested that it is possible for commerce to have the opposite effect.

An American Girl Success

There are four important lessons from the success of the American Girl dolls. First, history can be sold—even to children. This shouldn't be a surprise given that popular history and historical fiction are best-sellers for adults and children alike. But given the regular rending of garments and gnashing of teeth over the alleged dumbing down of our culture, this is surely encouraging. Of

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course, not all girls play with American Girl dolls or read their books. But enough do that the series is a huge success and continues to expand. How big a success? The founder of the company sold it to Mattel in 1998 for $700 million, and the company has sold over 80 million books and seven million dolls.

Second, the profit motive is enough to produce a product line that truly values the experience of multiple cultures. The American Girl series includes a representative sample of the different peoples who populated this country. The representations are respectful of cultural differences, emphasize strong role models from each, and are, as far as I can tell, reasonably accurate in their portrayals. One aspect of the dolls might not please diversity advocates, however: All are *American* girls first, rather than hyphenated Americans. This is a melting-pot vision of America, not one built on never-ending division along ethnic lines.

Third, history can be fun, and markets make it so. It is far too easy as an adult to forget what made us interested in history when we were young. History is interesting when it is fun and fun because it is interesting. The American Girl dolls make playing and reading about history fun. That's much more likely to create future historians than the dead text of social-studies books written by committees. Talking about what my daughters have read in their American Girl books has provoked substantive conversations that have opened up new avenues for my children and led them to want to read more about specific topics. Unlike government schools, which can force children to read boring books, the Pleasant Company can succeed only if it can convince children to ask for its products and parents to buy them. Market pressures produce better products.

Finally, the dolls are the result of a classic entrepreneur's vision. Pleasant Rowland, a former teacher and textbook writer with no formal business training, once visited Williamsburg, Virginia. As she told *Fortune Small Business* in an interview in the fall of 2002, "Off I went, thinking I was going to have a nice little vacation. Instead it turned into one of the seminal experiences of my life. I loved sitting in the pew where George Washington went to church and standing where Patrick Henry orated. I loved the costumes, the homes, the accessories of everyday life—all of it completely engaged me. I remember sitting on a bench in the shade, reflecting on what a poor job schools do of teaching history, and how sad it was that more kids couldn't visit this fabulous classroom of living history. Was there some way I could bring history alive for them, the way Williamsburg had for me?"*

Rowland, then 45 years old, took her savings and created the business from scratch in little more than a year. She built the Pleasant Company into a $300 million-per-year business in 12 years. With any luck, girls who graduate from the dolls to business school will one day be studying Rowland's story as a case study of entrepreneurial talent.

What's the moral? Markets aren't supposed to sell history, or if they do, it is almost always claimed to be inaccurate or dumbed down to the lowest common denominator. The success of the American Girl dolls suggests otherwise: good history sells, and entrepreneurs will find ways to sell it. The result benefits us all. Pleasant Rowland got rich on selling children a history of America that is multiethnic, emphasizes the contributions of strong women, and is accurate. Countless children got wonderful toys. Parents and grandparents got to watch their children and grandchildren grow up with a love of history. If markets can do that, what can't they do? □

*Julie Sloane, "A new twist on timeless toys," *Fortune Small Business*, October 1, 2002, p. 70.

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Does Prosperity Depend on Education?

by Christopher Lingle

NEW DELHI, India—It has become an article of faith that economic progress depends on having an educated citizenry. A corollary is often attached, requiring governments to provide resources to meet this end. However, like so many self-evident truths, there may be less than meets the eye.

Let's look at this conventional wisdom. Amartya Sen, Nobel Laureate in economics, insists that India's plague of poverty will be best remedied through massive additional state spending on education. Naturally, politicians and state-employed educationists eagerly embrace any idea that lets them acquire more power and gain access to ever more tax money, especially when where there is little accountability for corruption and nonfeasance.

There are several problems with assigning so much importance to education as the basis for a community's prosperity. On the one hand, formal education is neither necessary nor sufficient for either an individual or a community to be prosperous. On the other, proposals to increase public spending on education ignore extensive theory and endless examples of the failures of government provision of goods and services.

What of the effect of education on material success? At the individual level, numerous self-made tycoons succeeded with limited formal education. For example, a Balinese friend of mine never attended school. He learned English and enough of several other European languages to sell curios on the beach. As he grew up, he expanded into handling local art work and then eventually built an art gallery. He plowed some of his money into property that is now worth several million dollars.

Moreover, formal education is not sufficient for economic progress. Consider Cuba and Zimbabwe, countries that are at the top of the charts when it comes to literacy. Obviously, that is no guarantee of success.

What about tax funding for schools? A good place to start is with the numerous failures associated with government provision of education. An Indian government-sponsored "Probe Report" revealed that serious "malfunctioning" of government schools causes harm to low-income families. During unannounced visits researchers found "teaching activity" in only 53 percent of the schools, while the head teacher was absent in 33 percent.

Those problems were not found in private schools serving the poor. Random visits revealed "feverish classroom activity."

Thus it is no surprise that despite desperate economic conditions, many of the poor abandon state-funded schools to place their children in private schools. Government schools offer free tuition, books, and even lunches. Yet in Hyderabad, India, for exam-

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ple, official figures indicate that 61 percent of all students attend schools in the private, unaided sector. This ratio is probably higher since government schools overstate the number of their students to insure more funding.

Private schools are driven by a commercial logic instead of depending on handouts from the state or charities. Despite charging low fees, the private schools in urban ghettos of India make reasonable profits, which are reinvested. Ironically, most private-sector teachers receive about one-fourth of what is earned in government schools because teachers unions have succeeded in detaching wages from performance.

It turns out that the principal reason for the difference between the two kinds of schools is the lack of accountability for government teachers. Private schools provided stronger incentives for teachers to perform well and for administrators to insure that they offer quality education. Teachers can be dismissed by the administrators and parents can "fire" the school by withdrawing their children. No similar incentives operate within government schools, where teachers have jobs for life. Such security leads to complacency instead of inspiring them to be better teachers.

Even though the poor choose private schools, educational entrepreneurs in the slums face hostility from government officials and official barriers to offering their services. One estimate for India suggests that before a private school can be opened, at least 35 different requirements must be satisfied.

The private sector in India, as elsewhere, is ready and able to fill the needs of the people by providing education at all levels. Lessons can be learned from the behavior of many of India's poor, who know that private schools offer better services than government-funded schools. □

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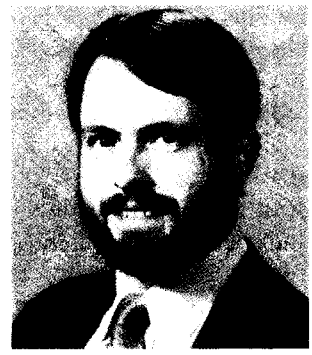

Health-Care Demagogues

The Bush administration seems ready to push Medicare reform, and Republican legislators are committed to creating a pharmaceutical benefit. The congressional hopper is sure to fill with bills attacking the pharmaceutical industry and probably even a few proposing to nationalize the entire medical system.

Some states aren't waiting for Washington to act. Maine and Vermont are trying to control drug prices. Florida is restricting the pharmaceuticals that Medicaid will cover.

In Oregon political activists unsuccessfully pushed an initiative for a Canadian-style, single-payer system last November. California State Senator Sheila Kuehl has proposed that her state adopt the same sort of plan.

West Virginia Governor Bob Wise and others score political points by using Canada to attack the drug makers. Pharmaceutical costs are "outrageous," he says. People are "being taken advantage of" since they pay more than residents of Canada.

It's an emotional litany worthy of the finest demagogue. Critics routinely heap abuse on the pharmaceutical industry, but only *it* makes new, life-saving medicines available to all Americans.

Of course, we face real health-care problems. In Governor Wise's state surgeons went on strike to protest rising malpractice premiums. But rates are rising because of an abusive tort system, not high drug prices.

Despite Governor Wise's obvious misconceptions, Canadian health care is no model for the United States.

Adjust for the two nations' differences—the United States has more war veterans and inner-city residents and spends far more on medical research, for instance—and medicine doesn't look so cheap up north. Indeed, a commission headed by former provincial premier Roy Romanow, appointed last year by the Prime Minister to review Canada's health-care system, has just published a report advocating a doubling of the national government's subsidies.

No wonder, given the fact that Canadians routinely stand in long lines for care. In fact, the Vancouver-based Fraser Institute estimates that Canadians are waiting longer than ever before for medical services. The average delay between general-practitioner referral and specialty consultation is 16.5 weeks; the time between the latter and actual treatment is another 9.2 weeks.

Delays for cancer patients run a month or two. The wait is almost seven months for eye care and eight months for orthopedic surgery.

Canadians have only limited access to new technologies. In August, reported Nadeem Esmail and Michael Walker of the Fraser Institute, "While ranking number one as a health care spender [compared to 26 largely European states], Canada ranks eighteenth in access to MRIs, seventeenth in access to CT scanners, eighth in access to radiation machines, and thirteenth in access to lithotripters."

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Total health-care outlays are determined by a "global budget" rather than medical needs. The province of Ontario closed its hospitals around Christmas 1993 because it was out of money. Explained Theodore Freedman, president of Toronto's Mount Sinai, which was shuttered for two weeks, "This is not about health care. This is about the deficit."

Patients flee abroad, particularly to America. Provinces contract out treatment, such as for cancer, to U.S. hospitals.

The story is much the same for pharmaceuticals. U.S. politicians have organized well-publicized bus trips to Canada to help constituents purchase pharmaceuticals at lower prices. "There's no question that prescription drugs cost too much in this nation," claims Senator Jim Jeffords.

But international cost comparisons must be viewed with skepticism, since there is no "correct" price. Prices overseas generally reflect the lower incomes of many nations and the highly politicized nature of most foreign health-care systems. Exchange rate variations also matter: America's relatively strong dollar make drugs priced in weaker local currencies seem particularly cheap.

Canada's economy too, has suffered, with its dollar losing nearly a quarter of its value over the last decade. As a result, many goods are cheaper there than here.

Less Litigation

Canadians also benefit from less, and less expensive, product-liability litigation. Economist Richard Manning estimates that one-third to one-half of the drug price differential between the two countries is due to the higher cost of liability litigation in America. Moreover, the national and provincial governments restrict prices, free-riding on American research and development.

Patricia Danzon of the Wharton School also points to issues involving patent protection, limited use of generics, and continuing availability of prescription drugs without prescriptions. After adjusting for such factors, she and Jeong Kim found, using 1992 data, "that the average U.S. consumer would have paid 3 percent more in Canada."

More recently, Dr. John Graham, director of the Fraser Institute's Pharmaceutical Policy Research Center, and Tanya Tabler, a student at the Faculty of Pharmacy at the University of Alberta, surveyed prices on both sides of the border. Although they found costs to be lower in Canada, Graham and Tabler observed that "a shopper can save almost as much money by bargain hunting within his own area as by crossing the border." Indeed, reliance on U.S. list prices is itself misleading since actual transaction prices are often lower.

Pharmaceutical controls also have sharply reduced Canadians' access to needed drugs. Even when the national government approves a medicine, provinces often do not cover its use.

For instance, Ottawa added only 24 of 400 drugs considered for reimbursement between 1994 and 1998. Provinces sometimes wait months or years before including pharmaceuticals in their formularies, or use such techniques as "reference pricing," covering only the cheapest drug within a therapeutic category, irrespective of relative effectiveness.

The consequences are predictable. Canadian physician William McArthur reports that more than a quarter of doctors in the province of British Columbia have had to treat and even hospitalize patients because of government substitutions of medicine; six of ten have seen their patients' conditions deteriorate.

American health care is a mess. But nationalizing the system will only exacerbate the problems. Drugs, which often cut costs by eliminating the need for other treatments, are part of the solution.

If Governor Wise and his allies nevertheless impose Canadian-style prices on drugs here, Americans will suffer Canadian-style access to drugs. In fact, the impact will be even worse, because Canadian-style pharmaceutical regulation means a Canadian-style pharmaceutical industry—with few new drugs and even fewer new breakthrough medicines. □

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MAY 2003

How California's Consumer Laws Legalize Extortion

by Steven Greenhut

Barry Zanck, owner of a small mortgage company in Newport Beach, California, says he had never had a complaint lodged against his business. So he was shocked when he was named, along with a dozen other mortgage-related companies, in lawsuits filed last year by a prominent southern California law firm.

"The unlawful, unfair and fraudulent business practices and false and misleading advertising of defendants . . . present a continuing threat to members of the public," the lawsuit stated. "Plaintiff and other members of the general public have no other adequate remedy of law. As a direct and proximate result of the aforementioned acts, defendants received and continue to hold ill-gotten gains belonging to members of the public."

What had Zanck done?

His company had run a series of advertisements in a real-estate advertising magazine that showed properties for sale along with approximate monthly payments, including principal and interest. At the bottom he explained the basic terms of the loan: 10 percent down at 7 percent with 7.388 percent APR. But Zanck didn't print the length of the loan—30 years—and didn't include his mortgage-license number, as required under federal lending regulations. Other companies named in the lawsuit had left out similar information in classified advertisements.

Soon after the lawsuit was filed, Zanck's attorney received a settlement offer from the law firm that filed the suit. The information it included was frightening: "Conceivably, your client could be required to return all profits earned over the past four years resulting from a violative advertisement." The law firm was willing to make the whole problem go away for a mere $13,000.

Zanck is a feisty guy and a successful businessman. Unlike many who fear the legal system and lack the resources to fight back, he decided to defend himself. When his attorney began playing hardball, the price of a settlement started dropping. But Zanck wasn't eager to settle. The matter ended up in court—something that rarely happens in cases like this. (He believes the plaintiff attorneys wanted to teach him a lesson after the *Orange County Register* wrote an editorial about the case.)

The judge ruled in Zanck's favor, saying, "I'm looking at those ads. I see them all the time. I'm a reasonable consumer. And if I picked up the phone and called and asked about those things . . . he would tell us what the price would be. . . . So judgment for the defense. There will be no injunction because there's nothing to enjoin."

Zanck's "victory" cost more than $10,000.

Steven Greenhut (sgreenhut@ocregister.com) is a senior editorial writer and columnist for the Orange County Register in Santa Ana, California.

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Judging Regulations

It's an old saying, but it's generally true: If you want to gauge the true effect of any proposed law or government regulation, ignore the promises and expect the exact opposite to come true. The War on Poverty? Figure it will cause government dependency and exacerbate poverty. The War on Terror? Figure it will create new grievances that lead to more terrorist attacks.

This basic principle is playing out today in California, as the state's consumer laws, designed to protect the "little guy" from unfair business practices, are providing unethical predators the tools to unfairly take advantage of those least able to protect themselves. The biggest losers are the consumers, who must pay more for products they wish to buy, and the small mom-and-pop businesses that are viewed as easy marks by entrepreneurial trial lawyers who exploit the state's unfair-business-practices law for private gain.

"They've sued bowling alleys, alleging that 'ladies night' discounts are unfair to men," reported the *Los Angeles Times*. "They've sued software manufacturers on the ground that their bulky packaging tricks consumers into thinking they're getting more than a small computer disk. . . . A small band of litigators has struck gold in the fine print of laws intended to protect Californians from hazardous chemicals, discrimination and business scams. They blanket the business world with hundreds of lawsuits at a time, often making claims that appear fanciful, even absurd."

Most Americans are familiar with the well-publicized abuses of the legal system. In January, a judge ruled that McDonald's could not be held liable for the obesity of children who—stop me before I eat again—couldn't help but stuff their faces with Big Macs. Despite the sanity of the ruling, this insane lawsuit was of a type that has become increasingly common. Companies are sued these days for the misuse, or overuse, of their products by consumers even though there is nothing wrong with the products themselves.

The basic goal: Score big monetary awards from gullible juries, who are moved by sob stories rather than by traditional legal theories. What's less commonly known is a form of legal abuse—legal extortion, really—in which the smallest businesses are targeted by trial attorneys for small sums of money. It's the low-rent version of the process described above by the *Times*.

Instead of seeking multimillion-dollar settlements, trial attorneys typically seek a few thousand dollars from scores of businesses at a time. Their goal isn't to get before a jury, but to exact settlements from small companies that know it is too costly to fight. It's cheaper to pay $5,000 in extortion than it is to hire an attorney and spend $20,000 to $30,000 to "win" in court.

One tool used to hammer businessmen is Section 17200 of California's Business and Professions Code, which deals with so-called unfair business practices. "Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition."

The section is vague about what unfair competition is, but it includes being in violation of any law. So Zanck—being technically in violation of federal advertising standards—could be said to have been engaged in unfair competition. But one needn't be in violation of any law to be accused of an unfair business practice.

At least 200 immigrant-owned nail salons in the Los Angeles area have been accused of unfair business practices by enterprising lawyers because the salons reuse nail polish on different customers. Never mind that there's no evidence showing harm from this perfectly legal practice and that the state's Bureau of Barbering and Cosmetology says there's nothing wrong with it.

In January, Los Angeles-area restaurant owners were sued for unfair business practices after their county health-department ratings on cleanliness and other health standards were downgraded from "A" to "B."

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In one case the cause of the lower grade was a malfunctioning refrigerator, which, according to the owners, was quickly fixed. But that one mistake led to a lawsuit from a Beverly Hills firm that specializes in 17200 actions. A restaurant with a "B" grade is allowed to keep operating, but to attorneys looking for shakedown opportunities, it's enough reason to file suit.

Some official state websites list regulatory violations by businesses, such as expiration of licenses. Attorneys scour those sites for companies to sue. It's another example of how the regulatory state leads to unfair practices against law-abiding citizens. It's one thing to be sued for harming consumers, quite another to be sued because you didn't cross every "t" on reams of state-mandated paperwork.

Basis of Tort Law

The tort system is flawed, but most people have no problem with the basic idea underlying it. If through negligence an individual harms another person, that individual should be forced to pay whatever damages the negligence caused.

Sell a consumer a toaster that, instead of toasting, blows up in the consumer's face, and the tort system is designed to provide redress. Most trial attorneys and consumer activists seem to believe that were it not for potential lawsuits and consumer statutes, companies wouldn't care if their products maimed or killed customers. They forget that any toaster maker that provided singed hair instead of nicely browned bagels wouldn't be in business very long.

But these days suits are filed against companies even though their products function properly. For example, a gun maker was sued after a man shot up a San Francisco office building; the suit was based on the dubious idea that the company had marketed its guns to criminals. In a similar vein, the parents of obese children didn't sue McDonald's because the burgers were adulterated; they sued because their kids ate too many of them. This clearly was an abuse of the process.

The 17200 lawsuits take the abuse one step further. At least in the cases just mentioned there were actually injured parties (though they weren't injured by the defendants). In the 17200 lawsuits there literally are no victims. No prospective homebuyer complained that Zanck's advertisements lacked all the necessary information required by federal regulation. No customer of the nail salons complained that they caught a disease from the reused polish. No diner claimed to have gotten ill at the restaurants with the "B" rating.

In the late 1970s the plaintiffs' bar managed to insert a provision into the business and professions code that is the heart of the extortion-lawsuit racket today. The original law allowed the attorney general, local district attorneys, and city attorneys in larger cities to use 17200 to file lawsuits against businesses that were deemed to be using abusive or fraudulent tactics. But the amendment allowed any member of the public to serve as a plaintiff in a lawsuit, even if he had not been wronged by the defendant, and it allowed private attorneys to bring cases in the name of the public.

Although many other states have consumer statutes similar to 17200, only California has such glaring incentives for abuse.

In the Zanck case the plaintiff wouldn't say under oath why so many lawsuits had been filed in her name. She couldn't even say how many lawsuits there were. Such a plaintiff is the law firm's stooge. Sometimes a firm creates a small "consumer" organization to serve as a plaintiff; it might be nothing more than the wife of the attorney. Since anyone can be a plaintiff, the only reason to create an organization is for the public-relations value.

Because no one alleges any harm in these suits, the money received in the settlements goes straight to the law firm. Despite a settlement, other law firms can sue a company over the same alleged violation, and the same law firm can sue a company over another similar mistake.

Repeat Victims

At a January hearing conducted by members of the state assembly in Santa Ana,

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many owners of small companies said they had been repeat victims of the practice. The tactics often are crude, resembling the sort of shakedowns perpetrated by mobsters: pay now and the price is $3,000, but wait until Monday and it goes up to $8,000; we know your books aren't right, so if you don't pay up we'll make you open your tax records, and we might contact the IRS in the process.

The California Bar Association is investigating this abusive practice, but few observers believe that the plaintiffs' bar, which gives seminars on how to build a law practice based on 17200 lawsuits, will do anything to put an end to this profit center. A few legislators are angry about the problem, especially because of the harm it's doing to immigrant businessmen, but state legislators rarely say no to the trial-lawyer lobby.

Attorney General Bill Lockyer has criticized the abuses, but consumer "protection" has been his forte, and his representative at the Santa Ana hearing was hooted down by angry businessmen because he spent his entire presentation lauding 17200 for allowing the state to go after miscreants such as—he really said this—Joe Camel.

To supporters of the free market, stories of entrepreneurship do the heart good. Yet in California today, traditional entrepreneurs are leaving the state to escape a crushing tax burden and a regulatory system that treats them like criminals. In their place are legal entrepreneurs who scour statutes to find ways to make profits on the backs of legitimate businesses. Instead of creating jobs and opportunities, these attorneys destroy them.

It's the antithesis of freedom and enterprise. Companies that actually harm people need to be held accountable. But when the legal system strays from its basic mission of sorting through grievances based on traditional legal precepts, the result can be harrowing. Instead of helping an individual to have his day in court, this system makes him vulnerable to the ravages of legal sharks.

It's the opposite of what consumer protection is theoretically about. Then again, given the long history of government regulation, why am I surprised? □

In Memoriam
Clarence B. Carson, 1925–2003

As this issue was going to press we received word of the death of historian Clarence Carson, one of our longtime contributing editors.

Clarence wrote more than 225 articles for this magazine and was the author of *A Basic History of the United States* (6 volumes) and many other books. A tribute to his life and work will appear in a future issue.

He is survived by his wife, Myrtice Sears Carson, and two daughters and their husbands, Evelyn and Mike Mallory and Melissa and Mark Bean.

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IDEAS ON LIBERTY
MAY 2003

I Never Dream of Nicotine

by Ted Roberts

Such is the intensity of tobacco litigation that every day somewhere in this great nation there's a judge, lawyer, or juror pondering the evils of the weed. The sun never sets on tobacco litigation. Tobacco is addictive, say the trial lawyers. All I know is that if this product is addictive, it's horribly flawed because at least 40 million Americans have shrugged off its clutches and turned to Lifesavers, chewing gum, or an extra slice of pie for dessert. Some narcotic.

Even I, well described by Oscar Wilde's aphorism as a man who can resist anything but temptation, kicked Joe Camel, the Marlboro Man, and Herbert Tareyton (remember him?) out of my fraternity of friends. That was 17 years ago. And contrary to the wisdom of the streets, my dreams are void of the perfumed scent of cigs, but full of Chateaubriand with mushroom sauce, voluptuous women who think I'm Brad Pitt, and stocks that triple and pay a special surprise dividend in the first hour of ownership. I mean I never dream of nicotine. Today I'm as nicotine-free as a newly born babe.

But we have legions of state attorneys general suing Big Tobacco because the weed that eases life's hurly-burly is "addictive."

Cigarettes are addictive and Budweiser isn't? The Bud Man is next in the lawyers' sights. If I were the king of Anheuser-Busch, I'd be looking at diversification into a line of bottled barley soups—nonalcoholic, of course.

The vultures of state governments smell carrion. We claim, say the attorneys general of 20 states, that because of Big Tobacco—not the smoker—our medical bills have been astronomical. And when the states collect, do we taxpayers get a refund? Nope. Is it not our money? Who is the state if not me? Where's my check?

So, smokers' ills cost the state medical plan many dollars. But hasn't the state's lottery plan cost me and my fellow citizens many dollars? In the latter case it was the state's *intention* to suck out of my wallet more money than the state lottery put into it. Intent is nine-tenths of the law, say my trial-lawyer friends. Intent is a *huge* legal discriminator when we talk sentencing and punitive damage. The states, with their lopsided lottery, *intended* to violate me economically. Can I sue? Not in this world. And maybe not in the next, since there'll be few trial lawyers in Heaven, where I'll renew my acquaintance with Herbert Tareyton, the Marlboro Man, and Joe Camel. Can't hurt me there.

The simple truth is that smoking is fun—a small bonfire of happiness—and though we know it's an ally of the old bony guy with the sickle, we're hoping and praying that we can have our smokes and our life, too. Whistling past the graveyard is a tenderly human delusion. Don't we all have a granddad or uncle who puffed his pipe for 60 years and hung out until he was 84?

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Yes, but smokes are bad for kids, you say. But, so are the lessons we teach with our lawsuits. Our obsession with addiction tells our children that there are temptations in life that will turn your backbone into cherry Jell-O. You can't resist. So don't even start. And we tell them that we are no more responsible for our own actions than a cat licking milk out of a cereal bowl. This is a curriculum more deadly than hemlock and much more damaging than a smoke.

But the courtroom industry loves those gargantuan awards. The lawyers go after punitive damages with all the addictive zeal they attribute to victimized smokers. Recent business headlines announced that the tobacco industry would appeal a $145 *billion* judgment against it by a Florida jury. One-hundred-forty-five billion of anything, including dollar bills, reaches from here to the moon more than once. One-hundred-forty-five billion silver dollars rivals the weight of Hoover Dam. And though I haven't done the calculation, I'm reasonably certain that if the award were paid in silver dollars, you would need ten of those monstrous dump trucks they use for dam building to haul away your loot. In fact, 145 billion silver dollars would plug up the gorge in the Yangtze River that the Chinese are now trying to fill. They would have done better joining the Florida class-action suit and using their award as fill.

Lethal Addiction?

The smokers' attorney, Stanley Rosenblatt, who weighs about 450 silver dollars, does not think that 145 billion is excessive. He laments that people have died "as a result of being addicted to this product." This is a class-action suit wherein hundreds of thousands of plaintiffs hit a jackpot whose lever was pulled by only three people. In other words, it's the antipodal position of taxation without representation. This is remuneration without obligation. No risk, no cost, no work. Sign a form and you've got a free lottery ticket. Somebody goes to court, but you stay home—light a Marlboro, pop the top on a Michelob, and wait for the phone to ring. The lawyers have learned how to virtually stuff the whole darn state in the courtroom.

This Florida award is granted to individual smokers. It's entirely separate from the quest for funds by the states. The success of the plaintiffs, be they individuals or states, has resulted from the assumption that the weed—in whatever form—is irresistible. As I say, the hinge that swings the verdict is that word "addiction"—a curious phenomenon. Evidently, it is an invisible component of the human soul-body union that has no physiological essence whatsoever. It cannot be weighed, or measured, or lovingly caressed by the fingers like silver dollars. It is our 21st-century version of the vampires, witches, and spooks of mythology who haunted mankind's uninformed past. Demon soul-stealers. You'd think they would be hooted out of the courtroom by a jury of mentally able citizens.

But no. Many a lawsuit—besides the tobacco litigation—hangs on the demonic theft of the body from its true owner. The villain: addiction—a vampire impregnable to crosses, wooden stakes, silver bullets or Yale Law School defense lawyers. And we laugh at the witch trials of Salem?

Today, in the enlightened 21st century, trial lawyers realize the power of these demons.

So, from dusty tombs emblazoned with ritual inscriptions, the trial lawyers resuscitate them, re-label them as addictions, and introduce them into the courtroom. They have made enough money to buy Transylvania and turn it into a refuge for retired vampires and old succubuses who no longer work a six-day week in the hearts of cigarette-smoking Floridians. They have learned that the pockets of Big Tobacco are deeper than the purses of black-gowned old ladies who like cats. □

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MAY 2003

The Myth of Health Insurance

Forty million Americans are said to have no health insurance. Those who do have health insurance are frustrated by having to pay ever-increasing premiums for steadily diminishing medical services. Conventional wisdom tells us that we are facing a "health insurance crisis."

It is important to recognize that what we call "health insurance" has little to do with health and nothing to do with insurance. We do not face a "health insurance crisis." We face the consequences of a set of economic and social problems rooted in a futile effort to make the distribution of health care—unlike the distribution of virtually every other good and service in our society—egalitarian.

The typical contractor of homeowner's insurance is the homeowner. He buys insurance to protect himself from costly loss caused by events outside his control, such as fire, not to defray the recurring expense of maintaining it. The ideal outcome for both the buyer and the seller of home and automobile insurance is for the policyholder to never make use of his policy.

The typical contractor of health insurance is not the insured person but his employer. Neither party is free to negotiate the terms of the policy. The employee cannot bargain for a lower premium in exchange for a high deductible or for choosing to be not covered for alcoholism or schizophrenia. The employer is not free to decline coverage for state-mandated medical services. In New York State, for example, the Women's Wellness Act mandates group health-insurance plans to cover contraceptives including abortifacients, and the Infertility Coverage Act mandates that they cover infertility treatments, including selective fetal reduction (abortion of multiple fetuses conceived by artificial means).

The economic survival of an insurance company depends in large part on collecting more in premiums than it pays out in claims. To bring about that outcome the insurer employs certain methods, some complicated, some very simple. Although embarrassingly obvious, some of these simple measures need to be mentioned because they are absent from what we mislabel "health insurance." For example, a person cannot buy a policy to protect himself from a loss caused by his own actions, such as burning down his own home. But so-called health insurance protects the individual from the medical consequences of his own actions, for example, injuring himself by smashing his car while drunk. Not surprisingly, all the participants in the complex scheme we call "health insurance" are unhappy with the result.

In the case of genuine insurance, there is a direct relationship between the dollar value of the protection purchased and its cost to the insured. The premium for a life-insurance policy with a face value of $100,000 is less than for a policy for a multiple of that amount. In health insurance no

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such relationship exists between premium paid and compensation received. Moreover, the health-insurance company, acting on its own behalf, can write a contract with a "cap" on claims, that is, for the maximum amount it will pay the insured, regardless of the health-care cost he incurs. The insured person, who typically does not act on his own behalf but is "provided" insurance as an important part of his job benefit, has no reciprocal options.

The sole rational purpose of true insurance is to protect the insured from an unanticipated economic loss so large as to jeopardize his economic well-being. No one sells or buys insurance to cover the cost of maintaining his property. Home insurance does not pay for plumbing repairs; automobile insurance does not pay for replacing worn-out windshield wipers. Yet people demand precisely this kind of reimbursement from so-called health insurance.

"Health Insurance": The Illusion of Equality

If health insurance is not insurance, what is it? It is a modern version of the illusion that all men are equal—or, when ill, ought to be treated as if they were equal. When religion was the dominant ideology, death was (supposed to be) the great equalizer: once they departed the living, prince and pauper were equal. Today, when medicine is the dominant ideology, health care is (supposed to be) the great equalizer: everyone's life is "infinitely precious" and hence deserves the same protection from disease. Of course, prince and pauper did not receive the same burial services, and rich and poor do not receive the same medical services. But people prefer the illusion of equality to the recognition of inequality.

Actually, the ruled have always longed for "universal health care," and the rulers have always supplied them with a policy that the masses accepted as such a service. In the Middle Ages, universal health care was called Catholicism. In the twentieth century, it was called Communism. In the 21st century, it is called Universal Health Insurance. What we choose to call "health insurance" is, in fact, a system of cost-shifting masquerading as a system of insurance. We treat a *public, statist political system of health care as if it were a system of private health insurance purchased for the purpose of obtaining private medical care.*

Everyone knows but no one admits that health insurance is not really insurance. In fact, Americans now view their health insurance as an open-ended entitlement for reimbursement for virtually any expense that may be categorized as "health care," such as the cost of birth-control pills or Viagra. The cost of these services is covered on the same basis as the cost of medical catastrophes, such as treatment for the consequences of a brain tumor. Such distorted incentives produce the perverted outcomes with which we are all too familiar.

From a public-health point of view, the state of our health is partly, and often largely, in our own hands and is our own responsibility, even if we have a chronic illness, such as arthritis or diabetes. It is an immoral and impractical endeavor to try to reject that responsibility and place the burden for the consequences on others. □

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Saving the Environment for a Profit, Victorian-Style

by Pierre Desrochers

In the mind of the 21st-century environmentalist, Victorian cities and towns evoke images of black coal smoke and unsanitary conditions. For most people of the time though, they were one of humanity's supreme achievements. Not as clean as the countryside, no doubt, but thriving places where millions of rural poor had been lifted out of their miserable condition.

Pollution might have seemed an acceptable price to pay for such progress, but a surprisingly large number of Victorians thought it reasonable to expect both a higher standard of living *and* improved environmental amenities, if some trends that they witnessed in their day continued in years and decades ahead. First among these were the tremendous successes of entrepreneurs and technologists in creating valuable byproducts from industrial waste.

While many writers collected bits and pieces of information on these achievements, the journalist Peter Lund Simmonds (1814–1897) published a massive synthesis on the topic, first in 1862 and in a significantly revised form in 1873, which he titled *Waste Products and Undeveloped Substances; or, Hints for Enterprise in Neglected Fields*.[1] Simmonds's books discussed the profitable re-use of virtually all types of industrial and other waste. A point he never tired of making was that not only had considerable wealth been extracted from formerly wasted residuals, but also that the environment was typically better off as a result. A few such cases will give a glimpse of the achievements of Victorian manufacturers.

As Simmonds reminded his readers, what should be done with the fifth quarter of the animal, or the "offal," was a question that "formerly used to be perpetually assailing Boards of Health, and other sanitary bodies who have the supervision of slaughter-houses, meat-markets, &c." By the time he wrote his books, however, the offal of cattle suited for food, the waste from dressing skins and preparing leather, and other animal refuse had all found "distinctive and remunerative uses." A contemporary of Simmonds, the polymath Charles Babbage, thus described in 1832 the profitable uses of horn byproducts: "The tanner who has purchased the raw hides, separates the horns, and sells them to the maker of combs and lanterns. The horn consists of two parts, an outward horny case, and an inward conical substance, somewhat intermediate between indurated hair and bone. The first process consists in separating these two parts, by means of a blow against a block of wood. The horny exterior is then cut into three portions with a frame-saw."

Babbage proceeded to enumerate the various processes used to turn parts of the horn into combs, a glass substitute for lanterns,

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knife handles, soap, glue to stiffen cloth, and fertilizer. "Besides these various purposes to which the different parts of the horn are applied," Babbage wrote, "the clippings, which arise in comb-making, are sold to the farmer for manure [fertilizer]. . . . The shavings, which form the refuse of the lantern-maker, are of a much thinner texture: some of them are cut into various figures and painted, and used as toys. . . . But the greater part of these shavings also are sold for manure."[2]

As Simmonds pointed out, if "such skill and ingenuity" had not also been exhibited in the case of bones, and if bones had been left to rot, "producing fever and disease," there would indeed have been "cause for anxiety amongst sanitary authorities." Yet, this was not the case, and it was there for all to see "how the danger is dispelled, and a source of evil becomes the agent of much good, and the subject of a thriving and prosperous industry."[3]

Recycled Water and Other Byproducts

What was true for animal byproducts was true for most other industries. Simmonds thus describes a process developed at the Kinghole woolen mills, near Dumfries, by which the refuse water of the washing houses had been converted into valuable commercial material. "By means of mechanical appliances and chemical action," he wrote, "the refuse formerly turned into the river Nith to the injury of the salmon, is made to produce stearine, which forms the basis of composite candles, as well as a cake manure that sells at 40s per ton."

A friend of Simmonds, the chemist Lyon Playfair, similarly described progress at another textile mill where the recovery of used madder (the residual of a plant that formed the basis for a dye) provided both economic and environmental benefits. "The large quantities of spent madder constantly accumulating," he wrote, "were found exceedingly inconvenient." Used madder was not valuable enough to be turned into fertilizer and, as a result, this waste material was at first thrown into rivers. But, Playfair observed, it came to the attention of chemists that one-third of the coloring matter was thus thrown away. A simple treatment with a hot acid was soon devised and again rendered it available as a dye. The result, he observed, was that the "waste heaps are now sources of wealth, and the dyer no longer poisons the rivers with spent madder, but carefully collects it in order that the chemist may make it again fit for his use."[4]

The slag from iron furnaces provides another interesting illustration. This waste matter was on the mind of several Victorians and led to numerous proposals and experiments. For instance, on the evening of March 25, 1855, a Dr. William Smith of Philadelphia read a paper at a London meeting of the Society of Arts on "The Utilization of the Molten Mineral Products of Smelting Furnaces," in which he discussed a new technology that he had developed to turn slag into bricks or blocks for the construction industry. In the discussion that followed, one Mr. Nesbit said that even though the paper was of great importance, he thought that the subject was not new. Actually, he had himself labored much on the topic almost a

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decade earlier and, as he pointed out, his experiments took him to numerous works in southern France, south Wales, and parts of England and Scotland.

Other interesting remarks were made during this meeting on the cost to manufacturers of getting rid of this byproduct and on the fact that it could therefore be obtained cheaply from them. A Mr. Austin noted that he had known some iron masters who paid a lot to convey the slag away, which increased the price of iron, and that this would not be the case if it were convertible to useful purposes. This, he was convinced, "only required the spirit and energy which Englishmen possessed, to carry it out to a very profitable result."[5]

Smith's proposal, like many others before and after him, did not prove commercially successful. An innovative solution to the problem of slag was nonetheless found a few decades later when it became largely used as a substitute for stone in concrete and for sand in cement mortar. The British engineer John Kershaw described the major improvement that this brought to the British landscape: "Not only has this new manufacture solved the problem of slag disposal in Staffordshire, and in the other iron-producing districts of this country, but . . . the immense accumulations of slag, due to the past activities of the blast-furnaces, are being gradually removed, and the outward aspect of what in the past has been known as the 'Black Country' is undergoing a gradual change for the better, as a result of the success of this new manufacture."[6]

Perhaps the most spectacular case of profitable byproducts recovery in the Victorian era resulted from the purification of coal gas. As Playfair wrote, coal gas was only reluctantly accepted at the beginning of the nineteenth century because of its noxious side effects: "It was no mean innovation to replace tallow candles and oil lamps by an air streaming through pipes, but the difficulties attending its purification from noxious ingredients appeared even more insuperable than to reconcile the public to the innovation: the gas had an insupportably foetid odour, and certainly injured health when burned; it discoloured the curtains, tarnished the metals, ate off the backs of books, and covered everything with its fuming smoke."[7] According to Playfair, "it required a man of courage, as indomitable as [Frederic] Winsor, its great advocate, to persuade the public to continue its use until means were found for the removal of these noxious qualities."

The negative side effects of coal gas resulted from the presence of substances such as sulfureted hydrogen, which tarnished the metals and, with sulfuret of carbon, produced sulfurous fumes; ammoniac compounds, which changed the colors of dyes and acted on leather; and tarry vapors, which deposited soot. In time, however, chemists were able to turn the sources of these problems into profitable byproducts.

As Playfair put it, "the waste and badly-smelling products of gas-making appeared almost too bad and foetid for utilization, and yet every one of them, Chemistry, in its thriftiness, has made almost indispensable to human progress."

Among other examples, the bad-smelling tar yielded benzole, an "ethereal body" that proved valuable as a solvent and for preparing varnishes, making oil of bitter almonds, removing grease spots, and cleansing soiled white kid gloves. The same tar gave naphtha, a solvent of Indian rubber and gutta percha. Coal tar also furnished the chief ingredient of printer's ink in the form of lampblack. It also substituted for asphalt in pavements. When the tar was mixed with coal dust (previously wasted in mining operations), it formed by pressure an excellent and compact artificial fuel. The water, condensed with the tar, contained much ammonia and was readily convertible into sulfate of ammonia, which was used as a fertilizer and in many other lines of work. Cyanides were also present among the products of distillation and were converted into the dye known as Prussian blue. The naphthaline, which used to choke the pipes, was also made into a beautiful red dye, closely resembling the color previously obtained from madder. Coal, when distilled at a lower temperature than that required to form gas, turned into an oil containing paraffin, which

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was largely used as an antifrictional oil for light machinery.

Learning from the Victorians

Most "sustainable development" theorists show little faith in the incentive structure of market economies to do well financially and environmentally at the same time. Yet many Victorian commentators who were more familiar with commerce and industry saw a direct connection between increased competitive pressures and improved environmental amenities. In their judgment, technological innovation and entrepreneurial behavior insured both a better standard of living and solutions to serious pollution problems.

This is not to say, of course, that Victorian firms were more efficient or cleaner than current manufacturing operations whose foundations are built on more than a century of subsequent innovations. The criteria by which the environmental consciousness or environmental performance of Victorian entrepreneurs should be judged are therefore not 21st-century standards of cleanliness, but rather the improvements that they brought over previous practices. As the economist Thomas DeGregori writes, innovation and progress are never defined in terms of ultimate or final solutions, but rather in terms of "creating smaller or less important [problems] than those we solve."[8]

Even though the evidence presented here only deals with the United Kingdom during the Victorian era, similar processes can be found in all past advanced economies. Simmonds said: "Great Britain was the first to carry out this utilisation on an extensive scale, and her example is now being followed largely on the Continent, in Australia, the United States, and even in the River Plate States [Argentina and Uruguay], where numerous substances, formerly wasted, have now become profitable articles of commerce."[9] If Simmonds's assessment was correct—and it is corroborated by the fact that a few decades later treatises similar to his were written by French, German, and American authors[10]—a case can be made that economic development and improved environmental amenities have not only never been incompatible, but that economic progress has always *mandated* the development of more efficient practices and the discovery of profitable new uses for industrial waste. □

1. Peter Lund Simmonds, *Waste Products and Undeveloped Substances; or, Hints for Enterprise in Neglected Fields* (London: Robert Hardwicke, 1862), and Peter Lund Simmonds, *Waste Products and Undeveloped Substances: A Synopsis of Progress Made in Their Economic Utilisation During the Last Quarter of a Century at Home and Abroad*, 3rd ed. (London: Hardwicke and Bogue, 1876 [1873]).

2. Charles Babbage, *On the Economy of Machinery and Manufactures* (1832). Available at http://socserv.socsci.mcmaster.ca/~econ/ugcm/3ll3/babbage/babb2.

3. Bethnal Green Branch of the South Kensington Museum, *Descriptive Catalogue of the Collection Illustrating the Utilization of Waste Products* (London: George E. Eyre and William Spottiswoode for Her Majesty's Stationery Office, 1875), p. 36.

4. Lyon Playfair, *On the Chemical Principles Involved in the Manufactures of the Exhibition as Indicating the Necessity of Industrial Instruction* (London: Royal Society for the Encouragement of Arts, Manufactures and Commerce, 1852), pp. 173–74.

5. "The Utilization of the Molten Mineral Products of Smelting Furnaces," *Journal of the Society of Arts*, March 30, 1855, pp. 335–41.

6. John B.C. Kershaw, *The Recovery and Use of Industrial and Other Waste* (London: Ernest Benn Limited, 1928), pp. 3–4.

7. Playfair, pp. 186–88.

8. Thomas R. DeGregori, *A Theory of Technology: Continuity and Changes in Human Development* (Ames, Iowa: Iowa State University Press, 1985), p. 5.

9. Peter Lund Simmonds, *Animal Products, Their Preparation, Commercial Uses and Value* (New York: Scribner, Welford and Armstrong, 1875), p. iii.

10. For more detail on this issue, see Pierre Desrochers, "Industrial Ecology and the Rediscovery of Inter-Firm Recycling Linkages: Some Historical Perspective and Policy Implications," *Industrial and Corporate Change*, November 2002, pp. 1031–57.

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What's Wrong with How We Teach Economics

by Brandon Crocker

The decline in the core curricula of universities and the growing "cultural illiteracy" of high school and college graduates have been lamented in many books and articles. As universities have redesigned their curricula to fit the demands of political correctness and the particular interests of their faculties, we have seen an alarming rise in the number of college graduates who know little about the basics of American history and the Western tradition. But as troubling as this is, we need also to examine the state of economic education in America.

Though college economics programs have not suffered the same degradations that have occurred in many other disciplines, the fact is, in most major universities economics has never really been taught as well as it should have been.

The problem with the way most universities teach economics is the overwhelming emphasis on mathematics. When I was an undergraduate at the University of California, San Diego, in the 1980s, I remember one economics professor who, after displaying one particularly confusing mathematical function, stated bluntly that if you don't understand advanced calculus, you'll never understand economics. As I was struggling through calculus at the time, this was of concern to me.

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Mathematics is, of course, useful in understanding economics. Unlike other disciplines, such as political science, which have increasingly used mathematical formulations to explain principles, mathematical formulations actually do make sense in the study of economics. Though given the inability of economists to forecast GDP growth from quarter to quarter, and continual doubts about the accuracy of how we measure GDP in any case, the mathematical exactitude economists sometimes like to pretend exists in this "science" is a bit comical.

But as good and useful as mathematics is in economics, we have to remember what is behind all the variables in these formulas. The great economist and philosopher Wilhelm Röpke reminded us in his classic, *A Humane Economy,* that the economy is nothing more than the interaction of human beings. Or, similarly, the basis of economics is the title of Ludwig von Mises's tome, *Human Action.* The founding work of economics, *An Inquiry into the Nature and Causes of the Wealth of Nations*, by Adam Smith, is a work of observations that, without the use of advanced mathematical formulas, explains how markets function and how resources are effectively deployed. Smith's "invisible hand" may not be possible to graph or to represent as a mathematical formula, but it is as important in understanding market economics as are supply and demand curves.

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In the course of obtaining a B.A. in economics at UC San Diego, I was never assigned a single page of *The Wealth of Nations*. (Nor, for that matter, was I ever assigned anything by Wilhelm Röpke or Ludwig von Mises.) *All* the core courses I took in microeconomics and macroeconomics were focused on mathematical theorems and models (invariably Keynesian, not Austrian). Elements of human action did occasionally come up in explaining things like "Giffin goods" (goods that people consume less of as their incomes increase), which posed "quirky" exceptions to the economic models we were being taught. And in microeconomics the intuitive assumptions of human behavior behind the shapes of demand and supply curves were routinely explained. But for the most part, a typical college course in basic micro or (particularly) macroeconomics was 90 percent mathematical equations with scant attention paid to the vagaries of human behavior. (This is still the case, as confirmed by my perusal of standard textbooks and course syllabi, and my speaking with recent college graduates.) And when such behavior is explicitly discussed, it's usually in the context of how it can be neatly captured in a mathematical model.

More Than Mere Science

One factor behind the stress on mathematical modeling is the belief by the fraternal order of economists that being able to construct models and mathematical proofs elevates economics from a mere academic discipline to a "science." One of the outcomes is the conceit that the economy (the decisions and interactions of millions of individuals) can be accurately understood, modeled, and manipulated, which in turn encourages faith in central economic planning—a faith which is belied by history.

When I was an undergraduate, Ronald Reagan was president. Keeping up with current affairs, one of my macroeconomics professors devoted some class time to the ideas behind the so-called "Laffer Curve," which was the basis of the Reagan administration's argument that lower tax rates would increase revenue. Though this professor was more or less "conservative," he nonetheless scoffed at the notion because, as he proceeded to show, getting more tax revenue through lower tax rates was *mathematically* impossible. Of course, the mathematically impossible proved possible after all. In the wake of Reagan's tax cuts the revenue generated by even the highest income tax brackets increased, though they experienced the greatest percentage rate reductions.

My economics professor, like many economists, put too much stock in mathematical formulas and not enough in the study of the complex dynamics of human behavior in which incentives, interaction, preferences, and even individual "quirkiness" cannot be effectively plugged into a mathematical model. Although modeling can be a useful tool, we have to recognize its limitations, since we cannot predict with any degree of precision the various, and often far-reaching and unforeseen, effects of particular policy decisions on the behavior of millions of individual human beings.

My old economics professor who thought advanced calculus was the key to understanding economics was wrong. The key to understanding economics is understanding human action. Economic education will improve in this country when works that portray the grand nature of the economic process—works by Adam Smith, Wilhelm Röpke, Ludwig von Mises, F. A. Hayek, and others—are given an important place in the university. □

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The Progressive Income Tax in U.S. History

America's founders rejected the income tax entirely, but when they spoke of taxes they recognized the need for uniformity and equal protection to all citizens. "[A]ll duties, imposts and excises shall be uniform throughout the United States," reads the U.S. Constitution. And 80 years later, in the same spirit, the Fourteenth Amendment promised "equal protection of the laws" to all citizens.

In other words, the principle behind the progressive income tax—the more you earn, the larger the percentage of tax you must pay—would have been appalling to the founders. They recognized that, in James Madison's words, "the spirit of party and faction" would prevail if Congress could tax one group of citizens and confer the benefits on another group.

In Federalist No. 10, Madison asked, "[W]hat are the different classes of legislators but advocates and parties to the causes which they determine?" He went on to say, "The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice."

During the 1800s economic thinking in the United States usually conformed to the founders' guiding principles of uniformity and equal protection. One exception was during the Civil War, when a progressive income tax was first enacted. Interestingly, the tax had a maximum rate of 10 percent, and it was repealed in 1872. As Representative Justin Morrill of Vermont observed, "in this country we neither create nor tolerate any distinction of rank, race, or color, and should not tolerate anything else than entire equality in our taxes."

When Congress passed another income tax in 1894—one that only hit the top 2 percent of wealth holders—the Supreme Court declared it unconstitutional. Stephen Field, a veteran of 30 years on the Court, was outraged that Congress would pass a bill to tax a small voting bloc and exempt the larger group of voters. At age 77, Field not only repudiated Congress's actions, he also penned a prophecy. A small progressive tax, he predicted, "will be but the stepping stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich."

In 1913, almost 20 years later, the ideas of uniform taxation and equal protection of the law for all citizens were overturned when a constitutional amendment permitting a progressive income tax was ratified. Congress first set the top rate at a mere 7 percent—and married couples were only taxed on income over $4,000 (equivalent to $80,000 today). During the tax debate, William Shelton, a Georgian, supported the income tax "because none of us here have $4,000 incomes, and somebody else will have to pay the tax." As Madison and Field had feared, the seeds of class warfare were sown in the

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strategy of different rates for different incomes.

It took the politicians less than one generation to hike the tax rates and fulfill Field's prophecy. Herbert Hoover and Franklin Roosevelt, using the excuses of depression and war, permanently enlarged the income tax. Under Hoover, the top rate was hiked from 24 to 63 percent. Under Roosevelt, the top rate was again raised—first to 79 percent and later to 90 percent. In 1941, in fact, Roosevelt proposed a 99.5 percent marginal rate on all incomes over $100,000. "Why not?" he said when an adviser questioned him.

After that proposal failed, Roosevelt issued an executive order to tax all income over $25,000 at the astonishing rate of 100 percent. Congress later repealed the order, but still allowed top incomes to be taxed at a marginal rate of 90 percent.

Subsidies for Friends, Audits for Enemies

Roosevelt thus became the first president to practice on a large scale what Madison had called "the spirit of party and faction" and what Field had called the "war of the poor against the rich." With a steeply progressive income tax in place, Roosevelt used the federal treasury to reward, among others, farmers (who were paid not to plant crops), silver miners (who had the price of their product artificially inflated), and southerners in the vote-rich Tennessee Valley (with dams and cheap electricity).

In the 1936 presidential election, Senator Hiram Johnson of California, a Roosevelt supporter, watched in amazement as the President mobilized "the different agencies of government" to dole out subsidies for votes. "He starts with probably 8 million votes bought," Johnson calculated. "The other side has to buy them one by one, and they cannot hope to match his money." In that campaign, Roosevelt defeated the Republican Alf Landon by an electoral vote of 523–8.

The flip side of rewards for supporters was investigations of opponents. Senator James Couzens of Michigan, who supported Roosevelt even more vigorously than Johnson did, had said before Roosevelt took office, "Give me control of the Bureau of Internal Revenue and I will run the politics of the country."

Couzens lived to see the bureau begin to investigate Roosevelt's opponents. It started with an investigation of Senator Huey Long of Louisiana, who had threatened to run for president against Roosevelt. Next came an audit of William Randolph Hearst, whose newspaper empire strongly opposed Roosevelt for president in 1936. Moses Annenberg, publisher of the *Philadelphia Inquirer*, vehemently opposed Roosevelt's re-election campaign in 1936; the next year he had a full-scale audit, which was followed by a prison term.

Elliott Roosevelt, the president's son, conceded in 1975 that "my father may have been the originator of the concept of employing the IRS as a weapon of political retribution." But he was quick to add that "each of his successors followed his lead." That is a key point: once the machinery of retribution is in place, it is hard for politicians to resist using it. When Richard Nixon, a Republican, became president, he sounded like his Democrat counterparts when he described whom he wanted as commissioner of internal revenue. Nixon said, "I want to be sure that he is . . . ruthless . . . that he will do what he is told, that every income-tax return I want to see, I see. That he will go after our enemies and not go after our friends. It is as simple as that."

If we want to lessen "the spirit of party and faction," as Madison recommended, and if we want to avoid a "war of the poor against the rich," as Field anticipated, we would do well to scrap the progressive income tax. □

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MAY 2003

Berry Gordy Jr. and the Original "Black Label"

by Larry Schweikart

Asked to identify prominent people in the music industry, most Americans will name musicians. A few may mention Phil Spector, Herb Alpert, Burt Bachrach, or Quincy Jones—producers, writers, and arrangers, not (essentially) performers. A true "music geek" may even name behind-the-scenes music gurus such as Clive Davis (founder of Arista Records) or Ahmet Ertegun (founder of Atlantic Records). Yet few musicians, songwriters, or performers have had as much impact on the American music industry as Berry Gordy Jr., founder of the original "black label," Motown Records.[1] His is an illustrative chapter in story of American entrepreneurship.

Gordy loved the music business and dreamt of writing and producing. A former Golden Gloves boxer, he was drafted during the Korean War, and when he returned to his native Detroit, he started Gordy's 3-D Record Mart to sell jazz records. But the store floundered: his customers wanted soul and blues. In 1955, after only two years, Gordy folded the business and took a job at Ford Motor Company's Lincoln division.

But he had not given up his dream. He got his break when a concession business run by his family at the Flame Show Bar introduced him to several top entertainers. The Flame Show featured the top black acts in Detroit, including Billie Holiday and T-Bone Walker, and the club owner managed a young singer named Jackie Wilson. Gordy was invited to write some songs for Wilson, and he collaborated with Roquel "Billy" Davis to pen the hit "Lonely Teardrops."

Gordy soon met Raynoma Liles, who auditioned for backup singer in some of the acts Gordy had begun to produce. Raynoma (whom Gordy married) could write music, and this talent fit perfectly with Gordy's own freelancing songwriting style. In 1957 he produced "Reet Petite," also sung by Wilson, bringing still more ambitious acts to Gordy's doorstep. When a group called the "Matadors" was turned down by Wilson's manager, Gordy took it under his wing, changing its name to the "Miracles" and spotlighting its lead singer, William "Smokey" Robinson. Gordy was now wearing three hats, as manager, writer, and producer for the Miracles. He produced their minor hit "Got a Job" (an answer to the Silhouettes' "Get a Job") and the success of the Miracles, along with the songs Gordy wrote for Jackie Wilson, convinced him that he could make the leap to the next level: owning his own record label. In 1959, using $500 that his mother lent to him, Gordy formed Tamla Records and a publishing arm, Jobete Publishing. This was a significant move, because as any musician knows, the lion's share of the royalties goes to the publisher and writer, not the performer.

Gordy continued to write hits, including

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Jackie Wilson

"Money (That's What I Want)," recorded by Barrett Strong. But finding that his little label could not efficiently distribute the records around the country, he signed a national production and distribution deal with United Artists. In 1960, Gordy converted the Tamla and Hitsville USA record labels into a new company, "Motown," from Detroit's "Motor Town" nickname. On the advice of Smokey Robinson, Motown began to distribute its own records that year, bolstered by the success of Robinson and the Miracles' "Shop Around." By that time Detroit-based black talent started to beat on Gordy's door with regularity, and the artists produced by Motown started to gain acceptance in wider markets. Mary Wells, for example, achieved "crossover" into white markets with the classic "My Guy" (1964).

Some stars were literally right under Gordy's nose. His secretary, Martha Reeves, had a group called the "Vandellas," and she successfully lobbied Gordy to record the group. After proving their mettle by singing backup on a few Motown hits, "Martha and the Vandellas" was allowed to record solo, with results that, by that time, should not have shocked Gordy. Their songs "Heat Wave" and "Dancin' in the Streets" shot to the top of the charts.

Gordy realized, however, that blacks constituted only about 12 percent of the population in the United States, and even if he sold a record to every black adult, he could not make as much money as if he sold to only one-quarter of the white population. He therefore embarked on a risky and, in retrospect, brilliant strategy to "package" black Detroit acts in such a way that white audiences would buy their records. This was no mean feat. It could have backfired with his large black audiences, giving him a reputation for selling out. On the other hand, he faced a substantial hurdle in getting black artists on mainstream radio. Only a few years earlier, a white singer from Tupelo, Mississippi, Elvis Presley, had been denied airplay on some radio stations because he "sounded black." But Gordy realized that cultural differences had to be bridged from both directions. If whites were to embrace the less rigid structure of black rhythm and blues, the music had to be presented in a polished, sophisticated (and non-threatening) way. In short, Gordy's genius was that he presented black music in the entertainment structure that white audiences were familiar, and comfortable, with.

Breaks New Ground

Gordy hired a choreographer, for example, to teach the groups how to move. Motown choreography, which eventually became a caricature of itself, nevertheless in its early years broke new ground in musical presentation. He also realized that his singers, most of whom were from poor inner-city neighborhoods, needed to be able to make a good showing in interviews to better promote their records. He hired elocution instructors and taught the artists proper English and social skills. Gordy dressed his acts in suits, tuxedos, or full dresses. If racists were going to complain that black music would pervert the nation's youth, they would have a hard time proving it by looking at the Motown stable of groups, whose

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members were well-dressed, articulate, and polished. This was more than a superficial remake. "We don't accept an artist easily," Gordy told a Detroit newspaper. "We look for character and integrity as well as talent, and this produces a big family-type organization."

Gordy demanded of his acts hard work, a straight life, and commitment to "the system," and in return he recognized that he owed them sound financial advice so they would not squander their money. Setting up a financial-counseling service, Gordy explained in 1962, "We try to help artists personally with their investment programs so that they don't wind up broke. We are very much concerned with the artist's welfare."[2]

Perhaps Gordy's most impressive barrier-breaking move was not his formatted choreography or his "packaging" of black acts, but his fundamental assault on the construction of black blues itself. Knowing that traditional blues, as played by Muddy Waters, Blind Lemon Jefferson, and B. B. King would be a hard sell to white audiences, Gordy worked with Eddie Holland, Lamont Dozier, and Brian Holland (known as "Holland-Dozier-Holland" on the record labels) to transform the traditional 12-bar blues and 32-bar ballads into new, short strains that featured a repeated "hook," or catch phrase. The innovation can be heard in the Supremes' hit "Stop, in the Name of Love" and others.

Gordy's Motown Records cranked out many hits in the early-to-mid-1960s from the Temptations, the Supremes, Martha and the Vandellas, and the Four Tops, always keeping the records within a two- to two-and-a-half-minute time frame so that disc jockeys would play them.

Like other artists, Holland, Dozier, and Holland flourished in Gordy's Motown system, and yet they came to resent his control. The songwriters broke off in 1967 to form their own label. While they still produced a few minor hits, they never enjoyed the success they had at Motown—perhaps due in part to changes in musical taste by that time. They were not the first to leave: Gladys

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Berry Gordy

Knight and the Pips had left Motown after a huge hit, redoing Marvin Gaye's "I Heard It Through the Grapevine."

Motown suffered with the loss of artists and songwriters, and it fell into a two-year funk while Gordy struggled to find replacements. He found renewed life with a new band, the Jackson 5, who submitted to Gordy's "polishing" process in Los Angeles. After a year of preparation, the Jackson 5 released "I Want You Back," featuring the powerful and dynamic vocals of the youngest member of the family, Michael Jackson. Gordy realized that Michael had the strongest fan appeal, and during the time that the Jackson 5 continued to turn out the hits, Gordy groomed Michael for a solo career.

Gordy was correct in his assessment of Michael Jackson, but as had occurred with

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other Motown stars and songwriters, his tight grip alienated Michael and the group. In 1976 the Jackson 5 left Motown, renaming themselves the Jacksons, and not long after that, Michael Jackson changed the face of music history with his stunning albums, "Off the Wall" and "Thriller" (which was co-produced with Quincy Jones). Given the Gordy formula, it is unlikely Jackson ever would have created many of his masterpieces had he remained at Motown. But like so many others, including young Steveland Judkins (whom Gordy repackaged as "Little Stevie Wonder"), Michael Jackson owed his start to Gordy's genius.

Top Black-Owned Business

By the early 1970s, when *Black Enterprise* magazine labeled Motown the top black-owned business in America, Gordy had relocated many of his operations to Los Angeles. As he involved himself less in daily matters, Motown's hit-making reputation suffered. But with or without Gordy, Motown found that music itself had changed, developing a harder edge with the 1970s rock bands and the advent of the drug culture's psychedelic and "metal" music. Motown remained locked into a formula for groups, producing the Commodores, but the heyday of its creativity was gone, and further erosions of black dance music occurred when the "disco" scene made several white acts, such as the Bee Gees and K. C. and the Sunshine Band, into dance-music stars.

In 1988 Gordy sold Motown to MCA Records. He had literally changed the American music industry, introducing large numbers of suburban whites to "black" music and advancing the careers of many who now are honored in the Rock and Roll Hall of Fame, as is Gordy himself. Gordy became a victim of his own success, and like Henry Ford, the revolutionary finally turned into the old guard. But weep not for Berry Gordy Jr. In the process of creating Motown records, he became wealthy, started an empire, and gave America some of its best music moments. □

1. For information on Motown, see Dave Edwards and Mike Callahan, "The Motown Story," online at www.bsnpubs.com/gordystory.html; "Sweet Soul Music," in Thaddeus Wawro, *Radicals and Visionaries: Entrepreneurs Who Revolutionized the 20th Century* (Irvine, Calif.: Entrepreneur Press, 2000), pp. 154–57; and Larry Schweikart, *The Entrepreneurial Adventure: A History of Business in the United States* (Ft. Worth: Harcourt, 2000), pp. 398–99.

2. Ken Barnard, "Berry Gordy Jr.—Detroit's Record King," *Detroit Free Press*, December 26, 1962, www.freep.com/motownat40/archives/122662mo.htm.

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IDEAS ON LIBERTY
MAY 2003

What's So Good About Democracy?

by Norman Barry

It was once said that "democracy is the most promiscuous word in the language; she is everybody's mistress." Indeed, political regimes of widely differing institutional features label themselves democracies, as did totalitarian communist orders. Often, the best guide to a country's democratic credentials was that it didn't call itself democratic: compare West Germany's Federal Republic with the East German Democratic Republic.

A particularly instructive example of the meaninglessness of the term was the election of the Marxist Salvador Allende in Chile in 1970. He has always been heralded as a democratic communist who was destroyed by America and international capitalism. Yet he got only 36 percent in the presidential polling and was faced with a majority opposition in Congress. This licensed him to socialize Chile under the aegis of democracy.

A key to unraveling the problem is to borrow a distinction from old-fashioned logical positivism: *emotive* versus *descriptive* meaning. Some words convey descriptive information about the world—like those used in the weather forecast—while others are designed not to tell us anything factually important but to act on our emotions and garner our support, such as advertising slogans and political words. This is true of democracy: If anybody confesses to being anti-democratic he is likely to be called a fascist. In its emotive sense, all sorts of good things, such as liberty, rights, majority rule, and the public interest, are bundled up and marketed under the label "democracy."

A starting point then for extricating ourselves from this definitional quagmire is to put an adjective in front of "democracy." In the postcommunist regimes and in the West it is perhaps best understood as "liberal" democracy, which does indicate that the regime is understood not entirely in majoritarian terms. It might be contrasted with "communitarian" democracy or industrial democracy.

Unlike today, democracy was not always greeted with unsullied admiration. In nineteenth-century Britain it was even respectable to be opposed to democracy precisely because if it were understood as untrammeled majority rule, which was its single indisputable feature in those days, it would be a threat to liberty, the rule of law, individual rights, property, and "civilization." In John Stuart Mill's *Considerations on Representative Government,* all sorts of checks on the will of the people are adumbrated. Indeed, the whole point of a constitution is to protect long-term, permanent values against the transient whims of the mob. Indeed, it was slightly encouraging that Al Gore's defeat in the 2000 presidential

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election, despite his majority of the popular vote, was not met with outrage. Federalism is, of course, a major and welcome constraint on democracy.

A modern critique of democracy must proceed from these nineteenth-century skeptical insights—but with one crucially important qualification: the threat to civilization has not actually come from the unfettered mob but from the uncontrollable influence of pressure groups (Madison's "factions") on the social and economic process. They are much more dangerous than majoritarianism precisely because they can claim the imprimatur of liberal democracy for their anti-individualistic and anti-market effects.

Elitism and Democracy

It was the Italian theorists of elitism who first produced a powerful, theoretical critique of democracy, and some of their strictures are relevant to modern considerations.[1] The economist Vilfredo Pareto demonstrated the inevitability of elite rule, derived from a fundamental theory of human inequality, and showed that the word "democracy" could not be used to distinguish forms of government since all were based on differing types of irresponsible minority rule. Gaetano Mosca did the same thing, except that his elites derived from the bureaucratization of modern society. And, more interestingly, a study by Robert Michels of the German Social Democratic party revealed the "iron law" of oligarchy, which showed that, because of people's varying propensity for political activism, a minority of enthusiasts would manipulate a formally democratic system. In modern language, people whose opportunity cost for politics is low will dominate the system whatever its rules.

However, it was Joseph Schumpeter who demonstrated that a liberal democratic political regime could be consistent with a type of elitism.[2] He also produced the beginnings of the modern *economic* theory of democracy. It was commendably realistic and remarkably prescient.

Schumpeter attacked what had become

Joseph Schumpeter (1883–1950)

the orthodoxies of democratic thought: that majority voting somehow transmitted the will of the people to the government and that democratic government produced a better class of citizen (Mill's major justification for his version of representative government). Schumpeter easily showed that there is no homogeneous will of the people, only a collection of competing wills, and that the "public interest" is an illusion believed in only by political philosophers. He effectively turned democratic theory on its head. It was not characterized by an upward flow of opinion from the people to government, but the reverse. Competing elites (political parties) offer themselves and their wares to the public just as entrepreneurs offer their goods to consumers.

Schumpeter countered Pareto by seeing democracy as a competition (in this sense it does not matter how wide the electorate is as long as there is some freedom to compete): democracy is that "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote."[3] It is purely instrumental, a method, like monarchy or dictatorship, for choosing government. It does

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not necessarily produce some desirable end state, and it is consistent with any outcome. (We all know that Hitler won an election in 1933.)

Although Schumpeter had the key to a wholesale critique of democracy, he still supported it. Democracy could work, he thought, if a society were reasonably homogeneous, had a reliable bureaucracy (he wrote before Public Choice and its explanation of "rent-seeking" by officials had been invented), and not too many affairs were subject to political, as opposed to private economic, decision-making. He thought that the level of rationality fell as soon as people left the marketplace and played politics, either as voters or activists. This seems to be true. Just watch the supreme rationality of the housewife quickly responding to price changes at Wal-Mart, compared to her ignorance of the policy proposals of political parties at an election.

But Schumpeter didn't quite get it right. The problem is not that the housewife's rationality disappears. The problem is that it is not in her interest to be well-informed about politics. It is simply in no one's rational self-interest to be informed about what is in the "public interest." Least of all is it in anyone's interest to sacrifice his well-being for the "common good." Democratic theorists have never solved the problem of why rational people vote at all, given the nugatory effect a single vote can have on the result of an election.

The Logic of Democracy

A coherent critique of democracy requires things of which Schumpeter never dreamt: first, a *logical* explanation of why the public good cannot often be transmitted through the voting mechanism (not merely the casual observation that it rarely happens) and, second, a theory of why, in practice, democratic politics degenerates into a squabble over benefits among rival interest groups.

There is a famous paradox of democracy, first identified by the Enlightenment thinker the Marquis de Condorcet (who died in a French prison during the Revolution) and proved by Kenneth Arrow in the twentieth century.[4] Superficially this looks like a purely logical or mathematical game. However, it has serious implications for the normative theory of democracy.

The paradox arises when there are at least three possible decisions and three choosers. Imagine that individuals A, B, and C have preferences for options x, y, and z. A prefers x to y and y to z (therefore x to z), B prefers y to z and z to x (therefore y to x), and C prefers z to x and x to y (therefore z to y). In separate one-on-one votes (x versus y, x versus z, and y versus z) each voter would triumph. The rotating majority would prefer x to y, y to z, and z to x. Thus there is no single "people's will." Only in special circumstances will a coherent result be produced.[5]

Of course, in regular elections with only two parties no paradox occurs since there is only one vote and therefore only one winner. But look at Great Britain, which has three parties. With only one vote taken, the party that garners the most votes wins, and that is almost always a party with less than a majority. Tony Blair's Labour party was elected in 2001 with 44 percent of the popular vote. If three choices had been given and people asked to rank their preferences, the election either would have produced an Arrow paradox or the smallest party, the Liberal Democrats, probably would have won. When Ross Perot was a serious presidential candidate in 1992, a paradox could have occurred in America if voters had been asked to rank him, George H. W. Bush, and Bill Clinton, and separate votes had been taken.

The significance of this for democratic theory is that it is almost impossible to design a system that produces "the people's" verdict. Of course, even if a result occurred that avoided the Arrow problem, there is no guarantee that it would have been morally right. It all depends on what the spread of opinion is. In a racist society people's opinions are likely to be consistently ordered in degrees of nastiness. Arrow problems are likely to occur in free and open societies where there are varieties of opinion.

Individualists say that the voting problem

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It is clear that the erosion of the market has come about through the adoption of a democracy that imposes few constraints on government.

would be circumvented if decisions were taken by individuals privately. But presumably there would be some collective decisions, regarding national defense for example, so Arrow problems could still occur.

What Is Bad About Democracy?

Let's look now at the economic analysis of how conventional democracy works. The relevant question is whether it is an efficient mechanism for delivering genuine public goods, even for the minimal state. We should refer to Schumpeter's point that politicians are entrepreneurs interested in either power or the non-market income that office can bring. Is there an "invisible hand" in democratic politics, like the one in economics, which ensures that rational self-interest, via market exchange, will produce the public good?

Theory and evidence strongly suggests there is not. Public spending in a democracy is higher than people would actually prefer, as are the taxes imposed to finance it. And outbreaks of inflation regularly occur in democracies because governments have removed the constraint on money creation produced by the gold standard. Moreover, myriad policies would not be pursued were it not for the vote motive.

But in semi-socialist democratic regimes, like Great Britain and the rest of Europe, many services, like health and pensions, meet with regular disapproval precisely because they are *under-financed*. The classic example is Britain's socialist medicine on which the state spends a derisory 7 percent of GDP. If people could spend their money privately they would exceed this level. Thus democracy produces the paradox of vastly excess state spending in general while the government underspends on things that are actually wanted: there is no political mechanism that accurately reveals people's choices.

The explanation is that in a democracy the government tends to be a coalition of interests (factions), and in a system subject to little constraint the key to success lies not in promoting some "public good," but in rewarding with privileges these electorally significant groups. In most cases, the public good would consist in the government's getting out of the activity. But there are no votes in that direction because almost everybody gains from some governmental activity. Thus there are subsidies to farmers and, now, trade privileges (import controls) for the steel industry. In European systems, which have proportional representation, the bargains are struck at the parliamentary level. In arrangements where the winner requires only a bare plurality, the rivalrous parties themselves consist of rent-seeking coalitions.

In America, public spending is greatly increased by logrolling. For one state to get a majority in Congress for some federal benefit it has to support another state in its demands, which leads to greater spending all round. Also, the practice of passing "omnibus" bills severely weakens the opposition of the president (the line-item veto was defeated in the Supreme Court) since he might welcome parts of the bill on "public interest" grounds. In fact, a democracy would work better if the people voted directly on separate issues rather than having their representatives vote on bundles produced by the parties. Contra conventional conservatism, direct democracy is actually better than representative government.

A further point favoring government growth is that benefits are narrowly concen-

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trated while costs are widely diffused. Not many people notice the minor increase in taxes used to finance a privilege, yet the effect on the beneficiaries is immediate and obvious. What also encourages the emergence of special-interest groups is asymmetric information. Their members will have more knowledge of the particular issues that interest them than nonmembers and therefore will be in a strong position to influence government.

All of this makes everybody worse off, but each person is in a prisoner's dilemma: he has no rational incentive to break out of the system from which he gets some benefit because he cannot guarantee that others will be so enlightened. Things, then, might have to get worse before they get better. This happened in Australia in the 1980s. Protection was so costly that few benefited from it and there was an incentive to get rid of most restrictions in one go. A Labour government there did precisely that.

Is There a Way Out?

Because of its emotive appeal, selling an anti-democratic idea is politically difficult. Various alternatives have been suggested, but most are infeasible whatever their internal logic. As suggested above, an effective approach, paradoxically, might be to demand *more* democracy, with choices put to the people rather than to their elected representatives. It is clear that the erosion of the market has come about through the adoption of a democracy that imposes few constraints on government. No doubt a presidential candidate wouldn't believe it, but at the moment it is rather easy to get political power: you only have to win about 50 percent of the voters, not of the electorate, in a two-horse race for the office. It is even easier in multiparty parliamentary regimes.

It is true that America has a Constitution, but its original constraints have virtually disappeared. Besides, one wonders how "parchment protections" could ever be effective in an age of mass democracy. Most damaging of all has been the loss of genuine federalism. The Tenth Amendment, which was designed to preserve the integrity of the states, is senescent, and Washington has taken responsibility for things undreamt of by the Founding Fathers.

Still, it is worthwhile speculating on the kind of institutional reforms that might protect the individual and the market. Switzerland has managed to resist some of the excesses of rent-seeking because it has made use of its constitution. Amendments to it have to be approved by a majority of the cantons *and* a majority of the voters; citizens may demand a referendum on any legislation passed by the federal parliament; and there are other devices to preserve liberty. At the moment the cantons still spend significantly more than the federal government and the voters regularly resist their rulers by voting against any European Union connections. Their rulers favor the Union precisely because it is a rent-seeker's paradise.

All of this is rather tame for an anti-democrat. Even the Swiss constraints are not insurmountable; they have failed to resist some advances of centralized government. But they do constitute a model from which further dents in the edifice of conventional majority rule and almost unlimited sovereignty might be made. □

1. See Norman Barry, *An Introduction to Modern Political Theory* (London: Macmillan, 2000), pp. 284–87.
2. Joseph Schumpeter, *Capitalism, Socialism and Democracy* (London: Allen and Unwin, 1954).
3. Ibid., p. 229.
4. Kenneth Arrow, *Social Choice and Individual Values* (New York: Wiley, 1963).
5. See Norman Barry, "The Stakeholder Concept of Corporate Control Is Illogical and Impractical," *The Independent Review*, Spring 2002, pp. 541–54.

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CAPITAL LETTERS

Bike Helmets, Children, and Libertarian Philosophy

To the Editor:

In response to Ted Roberts's article criticizing the admonishing of children to use bicycle helmets ("Take Your Bike Helmet to the Safety Museum," February), I'd like to offer a couple of unscientific, anecdotal items from my own experience.

One is from a few decades ago, when I was a student. A friend of mine was a regular bike rider in the northern suburbs of Boston. . . . On one occasion he was riding through Inman Square in Cambridge. A "square" is defined in that part of the world as a place where streets meet at an angle, which is not a right angle. . . . You can go straight or take a slight right turn when going through. My friend went straight. A driver decided to take a right turn at the same time and in the same space. Newtonian physics operated as expected. My friend had a helmet and was quite sure he was saved from serious head injury by it. He was, I should note, a libertarian like me, and would not have advocated that anyone be compelled to wear a helmet. The environment he was riding in was quite a bit different from the nearly deserted park Roberts described. So at least the context of the traffic situation needs to be taken into account.

Around 1990 I was riding on a state road in Hollis, New Hampshire, a suburban . . . area with houses, flea markets, and occasional remnants of farms. As I was headed north, a Dalmatian ran full speed into me and knocked me over. I bumped my head on the ground, but wasn't more than scratched. I was wearing a helmet, as I normally do. I am sure the injuries would have been significantly worse if I hadn't been. The idiot dog wasn't trying to hurt me; like the driver in the earlier incident, it just wanted to get from where it was to where it was going and didn't realize that two objects can't simultaneously occupy the same space.

There is nothing statist about taking reasonable precautions against injury. And personally, I rather like the image of wearing a helmet "like a fullback, like an infantryman."

On a more serious note, I need to respond to Roberts's misuse of statistics: "Just guess where most injuries occur?" More injuries occur driving cars than jumping over Niagara Falls; that doesn't mean that jumping over Niagara Falls is safer. More injuries occur while driving because people spend far more time driving than bicycling or falls-jumping. Per mile ridden—which is what counts to the individual, and isn't libertarianism about individuals?—riding a bicycle on a moderately trafficked road at 10 mph is significantly more dangerous than driving a car on the same road at 40 or on an interstate at 75. A car is full-body armor compared to the protection one has on a bicycle.

But thanks for reminding me that I should get my bicycle out again, as soon as the snow starts melting.

—GARY MCGATH
By e-mail

To the Editor:

I enjoy *Ideas on Liberty* tremendously but I take great exception to the article by Ted Roberts, "Take Your Bike Helmet to the Safety Museum." As a magazine aimed at a younger audience, publishing this drivel is totally irresponsible and demonstrates, at least, that nobody in your editorial department rides a bike beyond your lovely campus.

Irvington-on-Hudson, New York, is on Route 9, which is a route often used by recreational bikers (non-professional bikers) who share the road with automobiles, trucks, buses, and motorcycles and face the same issues (wet and potholed streets, drunks, pranksters, and inattentive soccer moms in their SUVs crammed to the roof with screaming kids) as autos do. The difference is that the bike rider is riding a 20 lb.

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vehicle with most of his skin exposed except for his lycra shorts and shirt. If a rider is knocked to the ground or falls from his bike at normal riding speeds of up to 25-30 mph he hits his head. I can assure you that when a head meets pavement, an immovable object or an oncoming car, a helmet can mean the difference between a broken collarbone, scrapes, and bruises and death or a vegetative state.

Riding in a city at any speed is dangerous and riding off road in the woods, mountain biking, always involves falls, rocks, trees. Why do you think serious recreational bikers wear helmets, because they don't like the wind in their hair? Why do they wear protective glasses?

To make bike helmets for kids a libertarian issue is nonsense, and Mr. Roberts must have a lot of time on his hands and *Ideas on Liberty* must have a lot of empty space for this to get into print.

—John Myers
By e-mail

To the Editor:

If Ted Roberts wishes to take his bike helmet to the safety museum, he is surely welcome to do so. As for myself, having had three bike spills over the years—once from crossing a wet railroad track at a sharp angle, another when a pickup truck pulled out in front of me and, most recently, because a dog cut across in front of the bike—I shall continue to faithfully wear my helmet. In none of these accidents would I likely have suffered a brain concussion, but in two of them I would have had some lacerations on my scalp. I'm not sure of the statistics, but I understand that half of bicycle accident deaths are due to head injuries.

One can pay some outrageous prices for bike helmets, but satisfactory headgear can be purchased for $30 or less. I highly recommend wearing a suitable bike helmet, but whether it should be made legally mandatory is a separate area for discussion.

—Phil Clark
Carthage, Ill.

Ted Roberts replies:

I am pleased to receive Mr. McGath's comments: happy to see that, like myself, he is a believer in the value of anecdotal/personal experience, since his response to my fulminations was two personal anecdotes. That's a lot better than "data" from the Bike Helmet Manufacturers or Centers for Disease Control—fine organizations, but alas, concerned with growth, not truth. As I said, personal experience is not scientific, but it's eminently reliable. Mr. McGath makes the very good point that the biking environment has a lot to do with risk of injury. That's why my thesis was directed at kids who pedal the byways of the neighborhood. If I pedaled to a Manhattan office via the Long Island Expressway, I'd seriously consider headgear. Mr. McGath also mentions that we drive more than we bike—ergo more automotive head injuries. Mile for mile, he says the bike is deadlier. I'm not so sure. Could be. But regardless of the comparative safety of car and bike, wearing the helmet in the car might help, right? I mean, why be half safe?

But my article was not *only* about the risk of biker head injuries. It's about the price of prevention, which Mr. McGath does not address. As he says, you can hurt your head falling off a bike. No doubt about it. It is a finite possibility. Of course, even on neighborhood streets you can meet a wayward Mack truck that sneers at your helmet and mashes you into a hamburger. But the pertinent question is not entirely the possibility of head injury. The question is what you'll pay to *prevent* injury to you or your child. And the price is steeper for the child with a mind still unformulated. You do not want to implant the scary-world syndrome.

Beside my dining-room window stands a large Bradford pear tree. But even on windy days we have a serene supper without fear that the pear tree will join us at the dining-room table. There is a real probability—akin to head injury on a bike, I'd guess—that the tree will topple. I could call in an arboreal specialist (tree trimmer) and a stonemason (bricklayer) to build an expensive bulwark between that ten-ton tree and my family. But

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I'm not inclined to pay the economic and aesthetic costs. It's all about costs—like everything else in life.

Most of my answer above also applies to Mr. Myers and others. But if I were Mr. Myers and wanted to argue with Ted Roberts about his bike-helmet thesis, I'd find and then clearly state egregious accident statistics regarding the probability of head injury. Then I'd relate that danger to the other perils that beset humanity like drowning, traffic accidents, starvation, terrorism, electrocution, and spills out of lofty windows. Having proved the eminence of cracked skulls due to bike mishaps (if such an eminence exists), I'd attack the cost side of his tradeoff. (No, not only the price of the helmet.) I would try to prove them inconsequential compared to the risk of injury.

Mr. Myers does none of this. You can fall off your bike on Route 9, he says. You can be hurt. Yes, I agree. But that is not the point of my essay. The point is that the mind of a child is as vulnerable to fear as it is to pavement. That point went unnoticed by Mr. Myers and others.

It's not a libertarian issue? Since when do libertarians honor convention? If we didn't think adventurously, if we didn't respect the tradeoffs inherent in managing an intelligent life for us and our kids, we'd all have voted for Al Gore. Did he not promise a governmental safety net for all who were oppressed by life's uncertainties: the poor, the disadvantaged, the clumsy bike rider? Would Mr. Myers have popped a joyful wheelie when we were Gored with National Bike Helmet legislation! That's not a libertarian concern?

Charity versus Self-Interest

To the Editor:

I must object to Donald Boudreaux's article "Self-Interest, Part 1" (February 2003). Its premise is that Michael Milken, whose company went bankrupt, "surely" contributed more to society than Mother Teresa, whose religious order thrives long after her passing. Yet the article ignores this sharp contrast in long-term impact.

The reality, to coin a term from the article, is that charity has many powerful economic advantages over commercialism. For example, there are almost no transaction costs in charity—no paperwork, no middlemen, and not even identification requirements. Charitable transactions do not feed government, while commercial ones do generate taxes, including support for ruthless foreign regimes. Moreover, charity is not limited to an agreement between buyer and seller on a specific product or service, as commercial transactions are. In sum, selflessness epitomizes ideals that free enterprise can only strive to attain.

There are many activities where charity has trounced commercialism in the free market. Blood donations, for example, are more easily solicited by appealing to selflessness than by paying compensation. Medical care in general did better when its backbone was charity rather than Medicaid and Medicare. Education, too, was on a higher level when selflessness was its foundation rather than unions and compensation.

Economic freedom does not result from attacking those who donate their time or money rather than accumulate it. Truth be told, capitalism depends on the freedom to give. Unfettered charity is not the rival of free enterprise, but its foundation.

—Andy Schlafly
Far Hills, N.J.

Donald Boudreaux replies:

I hope that I didn't overstate my argument that self-interest is essential to the great and prosperous society that we Westerners enjoy. Of course Mr. Schlafly is correct to suggest that charitable impulses, and actual charity, often achieve many goals that would not be achieved otherwise.

My point was not that charity has no value, but, rather, that the value of self-interest is too often overlooked by those who celebrate other-regarding motives.

But while space does not permit me to address all of Mr. Schlafly's points, I must express my disagreement with his claim that Medicaid and Medicare are the "backbone" of modern medical care. These unfortunate

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government programs do play a large role in today's health-care market, but they are not its backbone. The backbone of modern medical care is the profit-seeking efforts by private firms to develop new drugs and medical devices, by physicians to provide effective care, and by private insurance companies to supply health insurance.

Guns and Barn Doors

To the Editor:

I enjoyed James Bovard's February "It Just Ain't So" about gun control. However, I take exception to his analogy [in this sentence: "Banning guns in response to high crime rates is like closing the barn door after the horse has escaped."]. I tend to think banning guns in response to high crime rates is like removing the doors from the barn to protect the other horses. This captures the complete idiocy of gun-control policies. First of all, there won't be any horses left; second, removing the only means of protection of whatever horses may be left won't make them any safer; and third, it allows any foreign horses (or other critters) to enter the barn easily.

It just don't make any sense!

—GORDON SMITH
Boulder, Colorado

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Delighted? Alarmed?
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IDEAS ON LIBERTY
MAY 2003

Individualism and Intelligence

How intelligent are human beings?

This short question is complex. Of course, intelligence exists in many varieties. A math genius might believe in the predictive powers of Tarot cards; a great novelist might stumble over the simplest exercise in logic; a stellar manager might be ignorant of literature.

While interesting, this particular complexity afflicting the question of human intelligence is not my concern here. I want to highlight a deeper issue: each of us, standing alone, is surprisingly ignorant and prone to great foolishness.

This assertion might sound shocking coming from an arch-individualist such as me. But whatever shock there is springs from a failure to understand individualism. To explore the question of human intelligence, then, requires that we first understand individualism.

Individualism, as used here, is a political philosophy. It is a set of truths about the nature of society and a set of precepts on the proper relationships between government and individuals. Individualism denies that society is distinct from the individuals who comprise it. It denies the existence of a "general will." It recognizes that aggregates used to discuss society—such as "GDP," "the American people," or "the city of Chicago"—result exclusively from the interplay of the choices and actions of multitudes of individuals. These aggregates have no reality other than that which is created by each of the millions of individuals interacting with each other in ways too complex to describe in words.

Individualism denies that government accurately reflects "the people's" wishes—because individualism denies that "the people," as a group, is a conscious entity that can wish. I have wishes; my wife has wishes; my neighbor has wishes. Some wishes might be shared universally. Others might conflict intensely. But even wishes that are shared by everyone are the wishes of unique individuals. No creature distinct from individuals has these wishes.

One consequence of this perspective is the individualist's suspicion of using government to force some people to do the bidding of others. The individualist rejects the romantic myth that some people are miraculously transformed by the state into something godlike that can discern and integrate the innumerable bits of knowledge dispersed among millions of human beings. In turn, the individualist is hostile to attempts to subjugate any person to any such allegedly "higher" entity.

Individualism is *not* a belief that everyone is, or seeks to be, isolated like an island from others. Individualists recognize the happy fact that each of us continually depends on countless other people—our family, friends, colleagues, and the literally hundreds of millions of strangers around the world whose creativity and efforts result in the goods,

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services, and ideas that are our prosperity.

The individualist understands that society grows organically only from the interplay of each person's choices and actions with those of millions of other people, and that coercion exercised by a central authority stymies this growth.

Human Intelligence

The individualist keenly appreciates the limits of each individual's knowledge. And in addition to being mindful of the importance of social cooperation, he is mindful also that:

- Cooperation cannot be coerced;
- Cooperation often involves creativity (for example, the entrepreneur's design of a better mousetrap to offer for sale);
- Because creativity is involved, and also because each individual possesses a unique but limited assortment of knowledge, the results of cooperation cannot be known in advance;
- Each individual, being quite ignorant, is prone to misperception and error; thus, the discovery of truth—the process of distinguishing correct from mistaken ideas—requires continual trial and error; and
- When people are free to cooperate, subject only to the necessity of persuading others to cooperate with them, the resulting social order is one in which everyone benefits from the unique bits of knowledge that each of the millions of other people brings to market relationships; through the market, I benefit from the unique knowledge of the butcher, the brewer, and the baker, even though I haven't the foggiest idea how each does what he does.

Thus the individualist reflects on how extraordinarily small is the amount of knowledge that any one person possesses, but how extraordinarily large is the amount of knowledge possessed only by others that nevertheless serves him. This reflection humbles the individualist. He realizes that he knows so very little. He understands how ludicrous it is for any person, or any group of people formed into any sort of committee, to fancy that he or they can comprehend the colossal details that are at the heart of even the most mundane market arrangements.

The individualist cannot help but laugh at the vanity of those who imagine that they can out-guess or out-plan the market, for that would be to out-guess or to out-plan hundreds of millions of people, each with unique bits of knowledge.

The individualist knows that a person truly isolated from a society of free men and women would be not only desperately poor, but also the possessor of the most irrational fears and misapprehensions.

Reflect on some common bit of knowledge—say, that the earth is round or that microscopic organisms can kill human beings. To us these facts seem obvious. But they are not obvious. For millennium upon millennium most people had no inkling of them. And you, dear reader, know these facts not because you discovered them, but rather because countless other people thought creatively and rationally and, by sharing their ideas with others, subjected their ideas to evaluation and refinement. This interaction of free and rational individuals is what discovered and confirmed these facts.

The earth looks flat to me, and I've never personally seen bacteria. Yet I know that the earth is round and that bacteria exist and are dangerous. I benefit from this knowledge, which is not of my own discovery. And as I reflect on these benefits, I realize that almost everything I know was discovered by others. It's knowledge that I, left alone for a billion years with a powerful computer, could never hope to discover on my own.

Alone I am ignorant and benighted; as a participant in a market society, I am informed and enlightened. I am informed and enlightened by the individual efforts of countless persons who have creatively used their freedom and their capacity for rational thought. □

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BOOKS

The Savage Wars of Peace: Small Wars and the Rise of American Power

by Max Boot

Basic Books • 2002 • 448 pages • $30.00 hardcover; $16.00 paperback

Reviewed by Ivan Eland

Max Boot provides a thorough and relatively candid history of the U.S. government's involvement in small wars. The section of the book on Vietnam is particularly honest and insightful—unlike many conservatives, Boot blames the U.S. military for at least part of the fiasco, rather than heaping all of the responsibility on the Johnson administration. The history is well written and worth the read.

Despite the 14 chapters of history on America's minor wars and conflicts, the real purpose of the book lies in its 15th chapter. Boot, a senior fellow at the Council on Foreign Relations, maintains that contrary to conventional wisdom, the United States has never been isolationist—by which he means that it has engaged in small military forays in a wide range of countries throughout its history. He uses that history to justify the current Pax Americana and the country's assuming the role of the world's policeman.

Boot notes that throughout its history the United States has engaged in wars that involved no vital national interest, had no significant public support, and began with no declaration of war. By attacking the "conventional wisdom"—essentially a straw man—the author is really challenging those who prefer a more restrained U.S. approach around the world. They do not deny that the U.S. government has failed to uphold noninterventionism—both in the distant and more recent past. But they do plead for a return to the intent of the founders of the American nation with regard to military intervention. That view was best summed up by Thomas Jefferson's maxim: "peace, commerce, and honest friendship with all nations—entangling alliances with none."

Boot argues that the original intent of the Constitution—that the president alone should not be able to take the country into war without approval by Congress—was undermined early in the republic's history during the wars against the Barbary states. Yet Boot's text indicates that Jefferson sent the U.S. fleet to the Mediterranean with a defensive mission vital to U.S. security—the U.S. Navy was to defend American merchant shipping and enforce treaty obligations. When the Pasha of Tripoli declared war against the United States, Congress authorized military action against that state. Later, Congress declared war against the state of Algiers.

Boot uses his compiled history to argue that the United States has always fought the "savage wars of peace" and should therefore not lack the confidence to do so in the future to "enlarge the 'empire of liberty.'" The author is a member of the club of neoconservatives who proudly use the term American "empire." Yet the "humanitarian interventions" that Boot advocates sound strikingly similar to Bill Clinton's policy of "engagement and enlargement," which had a goal of enlarging the community of free-market democracies. The main difference is that while the Clinton administration protested that it was not acting as the world's policeman, Boot and other advocates of American empire fully embrace the globocop role for the United States.

Boot concedes that "the American track record of imposing liberal democratic regimes is mixed" and less successful in the Third World. He also concedes that "short-term (or even medium-term) occupations . . . are unlikely to fundamentally alter the nature of a society." So he implicitly admits that spreading democracy and free markets at gunpoint is ineffective. Perhaps the United States should have more confidence that its system will prevail worldwide and act instead as a beacon for peoples shaking off tyranny and freely choosing liberty.

In the wake of September 11 the U.S. government should consider the possibility that

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its policy of military intervention is out of date and much more costly than in the past. With the demise of the Soviet Union and the rise of catastrophic terrorism, the benefits of intervention have declined and the costs of angering or threatening militant terrorist groups or rogue nations with weapons of mass destruction have skyrocketed.

The empires of old tried to exploit their colonies for resources and sheltered markets and taxed them to the benefit of the imperial government. In contrast, the American "neo-empire" provides costly security for most regions of the world, but cannot even get its closest allies to fully open their markets to American trade. Furthermore, every military intervention without congressional authorization or a declaration of war undermines the U.S. system of limited, constitutional government.

In advocating overseas meddling, Boot joins other armchair generals who are willing to send Americans to die needlessly in obscure parts of the globe, to satisfy their dreams of "empire." It is a shame that Boot's promotion of that idea mars an otherwise intelligent and useful history. □

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American Law in the 20th Century

by Lawrence M. Friedman

Yale University Press • 2002 • 736 pages • $35.00

Reviewed by Ian Drake

Writing the history of a country's laws, especially those of a nation as vast and varied as the United States, is a monumental task. It is even more difficult to encapsulate it in a single volume. Yet that is largely, if idiosyncratically, what Professor Lawrence Friedman of Stanford Law School has done.

The scope is grand by necessity because American government and law are immense at all levels. As I write this review and glance around my room, each thing I see has laws regulating its creation, existence, or disposal—most of which were passed in the twentieth century. For instance, the parts for the computer I'm staring at were shipped under international commercial treaties (under United Nations auspices or simply between the United States and the shipping country). Certain books on my bookshelf are available thanks to the Supreme Court's interpretation of the First Amendment. And finally, the dog sitting under my chair has been honored with a series of local ordinances that control how he is walked and immunized. Law is everywhere in America and, as Friedman notes, the history of almost any part of America in the twentieth century must make reference to the law.

His book can be divided into three large topics: the growth of American government at the federal, state, and local levels (and the resultant permeation of law into almost all aspects of life); the role of the state and federal courts in shaping statutory, common, and constitutional law; and "legal culture"—the lawyers, judges, officials, and bureaucrats, and their philosophies.

Friedman dutifully chronicles the growth of the federal government, especially noting the multitude of agencies and regulations. The story is peppered with obscure facts and anecdotes regarding the development of various agencies: for instance, the attorney general (Charles Bonaparte) who organized what became the FBI was a relative of Napoleon. Friedman accurately characterizes the federal government that evolved as a "Leviathan," with a plethora of administrative agencies inhabiting a "subterranean world" of their own. But readers might doubt his assessment of the New Deal as "profoundly conservative." (Friedman contends that the Works Project Administration and other programs were conservative because they sought to preserve dignity and maintain skills, rather than encourage idleness.)

As for the courts' role in forming our contemporary world, the Supreme Court applied the Bill of Rights (originally applicable only to Congress) to all levels of gov-

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ernment and created new constitutional rights (such as Miranda rights and the right to "privacy," especially in the case of abortion). Throughout this section, Friedman's "liberal" and statist sentiments are clear.

Finally, Friedman gives the lay reader valuable insights into what is best referred to as legal culture. In 1900 there were mostly small firms and lots of general practitioners. By 2000, huge law firms and legal specialization had become the norm, with many lawyers searching constantly for class-action suits to bring. The author also details legal theories that cropped up during the century—from formalism (adherence to deductive, universal rules) to critical legal studies (all law is another form of "power politics").

Friedman does not shy away from making moral and political assessments, and advocates of limiting government power will surely disagree with many of his opinions. For example, he contends that the ever-expanding state was inevitable because a Leviathan was a necessary result of a large industrial society. Undoubtedly, railroads, airplanes, and automobiles required certain new rules (or new applications of old rules), but the New Deal agencies and Great Society programs were not inevitable. They were creations born not out of necessity, but rather out of specific ideologies, and preserved to appease various constituencies. After all, the Interstate Commerce Commission died and no one cared. In certain respects, Friedman has it exactly backwards: Social change does not always require new law, but sometimes new laws lead to changes in society—changes that are usually not for the better.

Readers of this impressive work will come away better informed about American legal history in the twentieth century, but they should bear in mind that Professor Friedman's philosophy is hospitable toward the massive expansion of the state power that so drastically reduced individual liberty during that century. □

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Mad in America: Bad Science, Bad Medicine, and the Enduring Mistreatment of the Mentally Ill

by Robert Whitaker

Perseus Publishing • 2002 • 352 pages • $27.00 hardcover; $17.50 paperback

Reviewed by Sheldon Richman

Any snapshot can be misleading because it is necessarily out of context. Similarly, the flattering self-descriptions from the various headquarters of the mental-health industry can mislead anyone who is unfamiliar with the history of psychiatry. The superficial observer may be forgiven for believing that the industry is dedicated to healing.

That impression, however, is easily overcome with some historical knowledge, and medical journalist Robert Whitaker's *Mad in America,* though hardly the first in this genre, lends a helping hand in that regard.

As Whitaker demonstrates, the history of psychiatry is a story not of diagnosis and treatment, but of the brutal control and torture of undesirables—called madmen or the insane or schizophrenics—by doctors deputized by the state. From the start, psychiatry treated its captives like beasts and laboratory rats.

The descriptions of "treatments"—which in most cases were not seen as such by those who inflicted them, but rather as methods of restraint and punishment—might make readers queasy. For example: "The Bath of Surprise became a staple of many asylums [in the early nineteenth century]: The lunatic, often while being led blindfolded across the room, would suddenly be dropped through a trapdoor into a tub of cold water—the unexpected plunge hopefully inducing such terror that the patient's senses might be dramatically restored." As this example indicates, a medical rationalization always accompanied the abuse.

If one thinks times have changed, Whitaker catalogs its successors up to the present, including insulin coma therapy, electroshock, lobotomy, and drugs that

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induce the symptoms of Parkinson's disease. It reads like a description of a chamber of horrors. Nevertheless, each new "therapy" was hailed as a beneficent medical breakthrough that would return the insane to normal life. The inventor of lobotomy, Egas Moniz of Portugal, won the Nobel Prize for medicine in 1949. But invariably the optimism fizzled, a new therapy came along, and the old one was abandoned and even condemned. The pattern continues to this day.

Two points need to be stressed: (1) Doctors were not candid with their patients or the public about the risks and pain associated with these procedures, and (2) the patient's objections were irrelevant. For instance, "[T]he prevailing opinion among America's leading electroshock doctors in the 1940s and 1950s was that in the confines of mental hospitals, they had the right to administer such treatments without the patient's consent, or even over the patient's screaming protests," Whitaker writes. This was also the opinion of the legal establishment and the public. The Bill of Rights simply did not exist for those branded insane. It still does not.

Whitaker's chapters on the vogue, toxic antipsychotic drugs are eye-opening. First developed to control rambunctious (involuntary) hospital inmates, the drugs were transformed through a public-relations campaign into cures for schizophrenia when tight government budgets made deinstitutionalization fashionable. The documented corrupt collusion between the government-licensed medical profession and prescription-drug industry is a shameful episode in American history. Unfortunately, Whitaker doesn't fully appreciate how the Food and Drug Administration helped make this fraud possible.

Four problems mar this book. First, Whitaker fails to challenge involuntary psychiatric intervention in itself. He overlooks coercion when discussing the style of treatment he favors. This destroys his claim to being a champion of the victims of psychiatric injustice, for it is not the form of assault but assault per se that is immoral. In short, he is a reformer rather than an abolitionist But no reform can be acceptable within a compulsory relationship, in which psychiatrists are expected to represent the frequently conflicting interests of patients, families, and society at large.

Second, he is silent about the insanity defense, by which criminals are officially excused of their crimes while nevertheless punished with involuntary "hospitalization" and debilitating "treatments."

Third, he can't make up his mind whether mental illness is real or not, although he provides ample reason to see it as metaphorical illness and not the brain disease that psychiatry, despite the absence of biological evidence, has long insisted it is. Yet he entertains various genetic and neurological theories of schizophrenia as though he's not read his own catalog of psychiatric prevarications.

Finally, it is disturbing that in the entire book one finds no reference to Thomas Szasz. That Whitaker could have researched the history of psychiatry without encountering Szasz's half-century of criticism defies credulity. More likely, Whitaker avoided mentioning Szasz to prevent the book from being summarily dismissed in certain circles. Whatever the reason, it is poorer for the omission. For one thing, had he discussed Szasz's work, he'd have had to come to grips with the fact that behavior, however much disapproved, cannot be disease. □

Sheldon Richman is editor of Ideas on Liberty.

Uncivil Wars: The Controversy Over Reparations for Slavery

by David Horowitz

Encounter Books • 2002 • 137 pages • $21.95 hardcover; $16.95 paperback

Reviewed by George C. Leef

Probably because he was once one of them, David Horowitz brings out the worst in leftists when he writes about their destructive beliefs and close-minded attitudes. His books and speeches are usually

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net with wild vitriol by his former allies at Berkeley and the many other universities where tenured radicals (to use Roger Kimball's useful term) reign. Many would call him a racist and fascist if he wrote a book on raising hamsters.

Uncivil Wars is not about raising hamsters. It's about the absurdly divisive and emotional issue of reparations for slavery. In short, Horowitz says that it is nonsensical to adopt a policy that would require many people, not one of whom ever owned a slave, to give up anything to "compensate" other people, some of whose ancestors were held as slaves in the distant past. There really isn't anything new in Horowitz's argument, but he makes it cogently.

What the book is chiefly about is not the argument over reparations for slavery, but rather the reception the argument has received on America's campuses. The reaction at many elite universities to the mere presentation of an "insensitive" statement opposing reparations shows that we have a serious problem: they have become institutions of indoctrination rather than inquiry.

For several years the contention that the United States "owes" reparations to the black population for the long-gone institution of slavery has been circulating in the media and political circles. Randall Robinson, author of a book titled *The Debt,* has been especially vocal in pressing his case, which boils down to saying that today's Americans are responsible for the bad acts of the politicians who permitted slavery in the eighteenth and nineteenth centuries. Horowitz thought the time had come for a refutation, so in 2001 he wrote a piece entitled "Ten Reasons Why Reparations for Slavery Is a Bad Idea—and Racist, Too." He then attempted to have it published in various campus newspapers.

Where it was published the response from pro-reparations students and faculty members was swift and nasty. Horowitz writes that at the University of California, within hours of publication in the *Daily Californian*, "40 angry black students accompanied by their political mentor, a professor of African-American studies, invaded the paper's editorial offices. In a raucous, finger-wagging session, they accused Editor-in-chief Daniel Hernandez of running an ad that was 'racist,' 'incorrect,' and demanded a printed apology." Hernandez capitulated and confessed his errors in the paper the next day, writing that it was "unfair" for Horowitz to have purchased space in the paper without giving a chance for opposing views to answer directly.

What makes that last statement so risible is that neither at Berkeley nor any other campus did Horowitz's antagonists attempt to debate his arguments on their merits. Over and over the protests took the form of angry paroxysms. It's obvious that many college students have soaked up the post-modern idea that feelings are all that matter.

At the University of Wisconsin, a mob demanded that the administration bar the *Badger Herald*, which had chosen to print the Horowitz piece, from campus on the grounds that it was a "perpetrator of racist propaganda."

When the campus paper at Brown printed it, a new element appeared—theft. After the customary demand for an apology was ignored, protesters responded by taking every copy of the paper at every distribution point and throwing them away. A spokesman said that the theft was justified because Horowitz had made "a direct assault on communities of color at Brown." A faculty member defended the students, explaining, "I have talked to students who told me that they can't perform basic functions like walking or sleeping because of this ad."

The whole episode shows that many young Americans, students at top universities, are incapable of rationally discussing their political beliefs. Instead, they turn reflexively to storm-trooper tactics when someone challenges anything remotely connected with their "identity." Horowitz concludes that many Americans—not just those black student protesters—want the status of victimhood so badly that they can't think logically about arguments denying that they are victims entitled to reparations or other preferential treatment.

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While *Uncivil Wars* makes a useful contribution to the case against reparations for slavery, the greater value of the book is that it exposes an ugly truth about the intellectual climate at American colleges and universities. Horowitz says that they have become "swamps of almost bottomless ignorance and malice." He's right, and I fear that they will remain so long after the silly debate over reparations has been forgotten. □

George Leef is book review editor of Ideas on Liberty.

The New White Nationalism in America: Its Challenge to Integration

by Carol M. Swain

Cambridge University Press • 2002 • 416 pages • $30.00

Reviewed by Walter E. Williams

In *The New White Nationalism,* Professor Carol Swain, who teaches political science and law at Vanderbilt University, warns about the growing "white nationalist" movement in contemporary America that she says threatens racial harmony.

Swain argues that over the last ten years, this new white-consciousness movement has gained strength through exploiting white resentment over racial preferences and double standards favoring blacks and other minorities. The movement has also exploited white anger over soaring interracial crime rates; according to 1997 FBI statistics, of approximately 1.7 million violent interracial crimes involving blacks and whites, 90 percent were committed by blacks against whites. Fifty-six percent of violent crimes committed by blacks had white victims, whereas only 3 percent of violent crimes committed by whites had black victims.

According to Swain, the actual number of white hate groups is in question because of differences in classification by watch groups such as the Simon Wiesenthal Center, Southern Poverty Law Center, Jewish Defense League, and others. However, as of 2000 the Southern Poverty Law Center puts the number at 554. Experts differ as to the threa posed by groups such as the Ku Klux Klan Aryan Nation, and Skinheads. Some sugges that "liberal" watch groups might overstat hate-group threats to enhance their fund raising opportunities. Swain nonetheless sec them as significant threats and an importan wake-up call for Americans to re-examin policies and truthfully confront racial issues

I agree. Professor Thomas Sowell, whc has written extensively on matters of race. has frequently pointed out that multi-ethnic societies are inherently unstable. Sowell says. "Group polarization has tended to increase in the wake of preferential programs, with non-preferred groups reacting adversely, in ways ranging from political backlash to mob violence and civil war." Swain agrees with Sowell's findings, saying that racial preferences create a made-to-order grievance for white nationalist groups and their recruitment strategies.

Black and Hispanic emphasis on group pride, group self-determination, and multiculturalism have provided white nationalists with justification for advocating parallel forms of white solidarity seeking to protect white interests. In fact, David Duke formed the first National Association for the Advancement of White People (NAAWP) in response to his college experiences. He became upset because whites were not allowed to express racial pride while blacks faced no condemnation for doing so.

One of the most important parts of Swain's book is her discussion of what needs to be done. Mainly there must be open and honest discussion of racial issues in academia and the political arena. She says that honest discussion in the political arena is avoided, in part, so as "not to offend the affluent blacks in the Democratic Party coalition." She adds, "Instead of genuinely addressing the problems associated with white hostility toward racial preferences and how this is affecting the experiences of young Americans of all races, African-American leaders are expending valuable political capital on the pursuit of purely symbolic victories such as the removal of the

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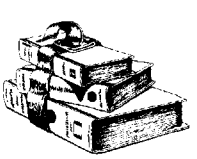
Confederate flag from public places, an effort that in much of the South has increased racial polarization without producing any concrete benefits for blacks or for anyone else."

Professor Swain's chapter "Concluding Observations and Policy Recommendations" makes bold recommendations. They are really just plain common sense, but they seem bold because common sense is so rare—especially in academia and politics. First, she says that "Americans need to regain control over institutions of higher learning and to restore an environment where ideas on controversial racial topics can be expressed without fear of harm or retaliation." The average American would be shocked by how intolerant professors, administrators, and students are on many campuses, where speakers with differing views are booed off stage, cursed, assaulted, and often require police protection.

Swain also says there must be a rejection of racial double standards that allow blacks to verbally assault and slander whites with racial epithets and false charges without suffering any loss of respect or financial damages. Examples include the NAACP's election 2000 advertisements suggesting that George W. Bush was an accomplice in the lynching death of James Byrd, Jr., and Jesse Jackson's telling black voters that a Bush win would mean the end of black civil rights. Other racial double standards include the acceptance of separate racial groups such as the Black Congressional Caucus or Black Students Union. Imagine the outcry if whites organized a White Congressional Caucus or White Student Union. Remarkably, Swain even calls for the ending of all racial preferences in employment and promotion.

All in all, I recommend Professor Swain's book as worthwhile reading. □

Walter Williams is professor of economics at George Mason University.



What Kind of Nation: Thomas Jefferson, John Marshall, and the Epic Struggle to Create a United States

by James F. Simon

Simon & Schuster • 2002 • 348 pages • $27.50 hardcover; $14.00 paperback

Reviewed by George M. Stephens

The struggle between Thomas Jefferson and Alexander Hamilton to define American government is well known. James Simon, professor of law at New York Law School, has written a carefully researched, thoughtful book about the less-familiar but equally important battle between Jefferson and John Marshall, third chief justice of the United States Supreme Court, to shape the kind of nation we would have.

Jefferson favored a government limited to protecting life, liberty, and estates, following the ideas of the English political philosopher John Locke. All other dealings, he thought, should be a matter of private contract between citizens. In the kind of nation Jefferson envisioned, the central government's effect on people's lives would be almost imperceptible.

Jefferson's limited-government view triumphed in the political arena following his election in 1800. But it did not prevail in the judicial arena. Hamilton's expansive "High Federalist" view was placed on the United States Supreme Court for life in the person of John Marshall. Marshall favored a far greater concentration of power in the central government than Jefferson.

Marshall was one of President John Adams's "midnight judges" (last-minute appointments with which he filled the judiciary with Federalists). Another was William Marbury, to be a justice of the peace, whose commission was duly signed by Marshall as secretary of state. Jefferson named James Madison to be Marshall's successor, and Madison refused to deliver Marbury's commission, setting up the famous case *Marbury*

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v. Madison. The Marshall Court in 1801 was asked to issue a judicial order to Madison to show cause for not delivering the commissions to Marbury and the other complainants.

Simon conducts a skillful analysis of Marshall's approach to *Marbury*, explaining how he crafted the decision to give Jefferson a tactical victory (ruling that Madison could not be compelled to deliver the commissions), while simultaneously giving himself the strategic victory by establishing the proposition that the Supreme Court had the power to invalidate unconstitutional laws.

Simon also takes up several other important cases of the era, including *Martin v. Hunter's Lessee*, which was a conflict between the judicial authority of a state and that of the federal government's authority to enforce the terms of a treaty, overturning the Virginia Supreme Court of Appeals. Justice Joseph Story, Marshall's principal ally on the Court, wrote that the Supreme Court must have authority to harmonize state and federal laws, or the Constitution would be different in different states.

Two more Marshall cases that set key precedents were *McCulloch v. Maryland*, which established that a state could not tax property of the United States, and *Gibbons v. Ogden*, in which the Court ruled against New York's steamboat-monopoly law in favor of the congressional coasting statute, because the Constitution made the federal law supreme in that field. This decision became the basis for extending interstate regulation to other modes of transportation.

The point of Simon's historical survey is to demonstrate how, with just a few crucial decisions, John Marshall's centralized government view triumphed over Jefferson's state-centered view, thereby determining the kind of nation we would become. In that the book clearly succeeds.

Simon is doing scholarly historica research, not assessing consequences, but it i interesting to examine a couple of them. Cen tralization of power is more likely to produc abuse than is fragmentation of it—a poin that Jefferson often made. An example i interstate-commerce doctrine, whic descended from *Gibbons*. In the late nineteenth- and twentieth-century, Congres began to regulate even commerce that did no actually move between states but somehow "affected" it, and the Commerce Clause became the vehicle for much federal interven tion. Many constitutional scholars have saic that the framers meant only to give Congress authority to "regularize" commerce: to prevent the states from erecting barriers against each other. Arguably, Marshall's Federalist jurisprudence is responsible for today's regulatory state, with its penchant for controlling almost every aspect of business.

A second important consequence arose from the decision in *U.S. v. Butler* (1936), which redefined federal powers. The Court said that, notwithstanding the list of powers granted to Congress in Article I, Section 8 of the Constitution, the General Welfare clause in that article was a conveyance of virtually unlimited powers. The Court cited the views of Justice Story in his *Commentaries on the Constitution of the United States*. It is highly doubtful that Marshall would have approved of the decision in *Butler*, but he had set his Court on the path. Jefferson had warned that through abuse of the Welfare clause the federal government could step onto a "boundless field of power," which it surely has. □

George Stephens is author of Locke, Jefferson and the Justices: Foundations and Failures of the U.S. Government.

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IDEAS ON LIBERTY
MAY 2003

An Egregious Union Scandal

The scandals involving serious misbehavior at Enron, WorldCom, Adelphia, Global Crossing, and Tyco have resulted in appropriate public outrage at the dishonesty and malfeasance in those corporations. At the same time they have resulted in inappropriate bashing of all corporations by labor unions and other anti-market interest groups, which have called for much greater government supervision. Yet those who rejoice over the opportunities the corporate scandals created to spread anti-market sentiments are rather blind when it comes to union scandals that are at least as egregious. A case in point is the ULLICO scandal that came to light last summer.

Union Labor Life Insurance Company was founded in 1925 to supply low-cost life insurance to union workers. It is a privately held corporation that for many years maintained a fixed administered price of $25 per share of its stock. Only unions, union officers and directors, and union members are allowed to become stockholders. In the 1990s ULLICO invested $7.6 million in Global Crossing, whose market value soared, reaching its peak in May 1999. The actual market value of ULLICO stock, as opposed to its fixed administered price, increased along with the value of Global Crossing shares. To split these gains with its stockholders, ULLICO offered to buy back shares at a new administered price of $53.94.

In December 1999 ULLICO's chairman, Robert Georgine, sent a confidential memo to the top officers and directors of the company, who were leaders of their respective unions, offering to sell each of them 4,000 shares at the $53.94 price. Soon thereafter the ULLICO board raised the administered price to $146 per share, and permitted themselves to sell the stock they had just purchased for $53.94 back to ULLICO for $146. The officers and directors enjoyed total gains originally estimated at $6.5 million.

Technically, all holders of ULLICO stock, including unions and rank-and-file workers were permitted to sell stock back to ULLICO at the $146 price, but the rules of the buyback restricted the amount that large stockholders (mainly the various unions) could sell. Rank-and-file union members held shares mainly through their individual unions' pension funds. Individual stockholders directly holding fewer shares than the unions—mainly the officers and directors of ULLICO—were permitted to sell all they had. They were the main beneficiaries of the $146 buyback. Unions, and therefore their rank-and-file members, were left holding shares of ULLICO whose actual value, following the collapse of Global Crossing, was rapidly falling. As in Enron, corporate officers and directors in ULLICO benefited while rank-and-file pension funds lost millions. The parallel is exact, but public outrage at the ULLICO scandal is missing.

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Perhaps this is because, with the exception of the *Wall Street Journal*, the press has almost totally ignored the ULLICO story.

However, it has attracted some law-enforcement attention. The National Right to Work Legal Defense Foundation has filed unfair labor practice charges against ULLICO with the National Labor Relations Board, and a federal grand jury has been convened to investigate the affair.

John Sweeney, president of the AFL-CIO, who was then on the ULLICO board, successfully put pressure on ULLICO president Georgine to appoint former Illinois Governor James Thompson as an independent investigator of the scandal. According to the *Journal*, the Thompson report estimated the perpetrators' total profit to be $14 million and called for those who gained to compensate the losers. As of this writing Georgine has refused to make the Thompson report public, and in protest of this secrecy John Sweeney resigned from the ULLICO board last December.

Every corporation has to file annual reports with the Securities and Exchange Commission (SEC) regarding its revenues and expenditures. Similarly, the 1959 Landrum-Griffin Act requires each union to file an annual financial report (called the LM-2) on their revenues and expenditures with the Department of Labor (DOL). But the LM-2 reporting requirements are loose, and the DOL has never done a good job of inspecting and auditing them. Moreover, the rules and reporting categories haven't been changed in 40 years, a period during which the functional categories of union expenditures have dramatically changed. And, unlike SEC requirements on corporate reports, LM-2 reports do not have to be independently audited before they are submitted. As a result, union reports are unreliable especially with regard to the extent to which union resources are used for political purposes. Unions are seldom forced to reveal details of their expenditures. For example, one union recently reported $62 million on line labeled "grants to unions." The SE would never tolerate such obfuscation. Th DOL always has.

Congress Complicit

Congress is complicit in this double stan dard. In response to the recent corporat scandals Congress enacted the Public Com pany Accounting Reform and Investor Pro tection Act, which strengthens the reportin requirements of corporations, but it doe nothing to strengthen the reporting require ments of unions. In fact, an attempt to add union-accountability amendment to the pro posed legislation was voted down by 55 sen ators. Their moral outrage is very selective It never applies to the unions that give sub stantial monetary and in-kind political sup port for their re-elections.

However, last December the DOL pro mulgated new, more stringent LM-2 disclo sure requirements. The unions promptly announced that they would try to block the implementation of the proposed new rules At this writing the DOL is seeking public comment. Even if the proposed new rules are finally implemented, the financial reporting requirements on corporations will continue to be much more stringent than those on unions. For example, the proposed rules would cover only the wealthiest 22 percent of unions, and there still would be no requirement of independent audits.

I have frequently commented in these columns on many legal double standards that favor unions over employers and individual workers. Here again, the best remedy would be to repeal the National Labor Relations Acts and all its amendments. In a regime of truly voluntary unionism the principal check on union corruption would be workers' exercising their exit options. LM-2 reports would provide the information workers wanted or the offending unions would perish. □

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